IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHERRY LYNN JOHNSTON	**§**	
Plaintiff	**§**	
VS.	**§**	**CIVIL CASE NO. 16-03215**
	§	
DAVID DEXEL, ET AL,	**§**	
Defendants	**§**	

PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Sherry Lynn Johnston (Sherry) daughter and heir of her now-deceased mother, Willie Jo Mills (Willie Jo) alleges claims for the acts and failures to act leading to Willie Jo's death, against defendants/co-conspirators jointly and severally: David Dexel, individually and as Guardian of the Person of Willie Jo Mills (Dexel); Ginger Lott, individually and as [Successor to Dexel] Guardian of the Person of Willie Jo Mills (Lott), and as Member of GSL Care Management, LLC; GSL Care Management, LLC (GSL); Clarinda Comstock, individually and as Guardian ad Litem for Willie Jo Mills (Comstock); Howard Reiner, individually and as Attorney ad Litem for Willie Jo Mills (Reiner); Tamorah C. Butts, a/k/a

Christine Butts, in her official capacity as statutory probate judge of Probate Court No. 4 of Harris County, Texas, and in her individual capacity (Judge Butts); Sherrie Fox, in her individual and official capacity for Harris County, Texas as Court Coordinator for Harris County Statutory Probate Court No. 4 (Fox); and Harris County, Texas (Harris County), defendants as set forth below.

I. SUMMARY OF CLAIMS

1. Plaintiff Sherry Johnston brought claims under 42 U.S.C. § 1983; 42 U.S.C. § 12101; and 29 U.S.C. § 790 in her Original Petition filed in state court on September 26, 2016, amended on September 27, 2016, together with pendent state claims. The defendants removed the case to federal court on November 1, 2016. See 28 U.S.C. § 1446(b).

2. Plaintiff files her First Amended Complaint after removal pursuant to 28 U.S.C. § 1441(c);

3. This Amended Complaint relies upon the following federal causes of action: 42 U.S.C. § 1983 the Civil Rights Act of 1871; 42 U.S.C. § 1988, conspiracy to violate civil rights; 42 U.S.C. § 12101, *et seq*. and more specifically Title II of the Americans with Disabilities Act (ADA);

Amendments to the Americans with Disabilities Act of 2008 (ADAAA) [1]; 42 U.S.C. § 12203 [ADA retaliation claims]; Section 504 of the

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[1] The ADA Amendments Act of 2008 (the Amendments Act or ADAAA) was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Pursuant to the Amendments Act, the definition of disability under the ADA, 42 U.S.C. 12101, et seq., shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA as amended, and the determination of whether an individual has a disability should not demand extensive analysis.

The Amendments Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the prior regulations and interpretive guidance contained in the accompanying "Appendix to Part 1630-Interpretive Guidance on Title I of the Americans with Disabilities Act," which are published at 29 CFR part 1630 (the appendix). Consistent with the provisions of the Amendments Act and Congress's expressed expectation therein, the Commission drafted a Notice of Proposed Rulemaking (NPRM) that was circulated which:

-Provided that the definition of "disability" shall be interpreted broadly;

-Revised that portion of the regulations defining the term "substantially limits" as directed in the Amendments Act by providing that a limitation need not "significantly" or "severely" restrict a major life activity in order to meet the standard, and by deleting reference to the terms "condition, manner, or duration" under which a major life activity is performed, in order to effectuate Congress's clear instruction that "substantially limits" is not to be misconstrued to require the "level of limitation, and the intensity of focus" applied by the Supreme Court in Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002) (2008 Senate Statement of Managers at 6);

-Expanded the definition of "major life activities" through two non-exhaustive lists:

-The first list included activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working, some of which the EEOC previously identified in regulations and sub-regulatory guidance, and some of which Congress additionally included in the Amendments Act; and

-The second list included major bodily functions, such as functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions, many of which were included by Congress in the Amendments Act, and some of which were added by the Commission as further illustrative examples."

Rehabilitation Act of 1973 (Section 504); 29 U.S.C. § 701 *et seq*., alleging that all defendants, in each capacity named, jointly and severally, violated and conspired to violate the constitutional rights of Willie Jo and Sherry.

4. This Amended Complaint also relies upon the following state court pendent claims: the wrongful death of Willie Jo Mills; intentional infliction of severe emotional distress, breach of fiduciary duty, conspiracy and participatory liability assisting or encouraging, and *ultra vires* acts.

5. The acts and omissions of all defendants, jointly and severally as set out below violated federal law(s) in a conspiracy based on color of state law by using or attempting to use state law as the basis for their actions – even violating state law as well.

6. The combined acts and omissions committed by the defendants, as described herein, resulted in and proximately caused Willie Jo Mills' painful and wrongful death, (see Exhibit S, pictures of Willie Jo documenting changes after Lott's appointment) [2] and resulted in damages claimed by Sherry Johnston in her capacity as a daughter and heir of Willie Jo Mills.

7. Defendants' violations included the following violations of federal law

[2] All exhibits referenced herein are attached and incorporated for all purposes as if fully set forth herein verbatim.

by defendants' acting under color of state law in the guardianship of Willie Jo Mills:

a. illegal disability discrimination;

b. violations of the integration mandate of Title II of the ADA;

c. illegal retaliation, coercion, and intimidation of Willie Jo Mills in violation of 42 U.S.C. § 12203, *et seq*.;

d. illegal retaliation, coercion, and intimidation against Sherry Johnston in violation of 42 U.S.C. § 12203, *et seq*.;

e. violation of Willie Jo Mills' Fourteenth Amendment due process right of access to court;

f. violation of Sherry Johnston's Fourteenth Amendment due process right of access to court;

g. violation of Sherry Johnston's First Amendment right to free speech;

h. retaliation against Sherry Johnston for exercising her First Amendment right to free speech - to speak out on matters of public concern;

i. mal-treatment of Willie Jo Mills in retaliation for Sherry Johnston's exercise of Sherry's First Amendment right - to speak out on behalf of protection Willie Jo Mills;

j. violation of Sherry Johnston's First Amendment Right to freedom of association with Willie Jo Mills;

k. violation of Willie Jo Mills' First Amendment right to freedom of association with Sherry Johnston and/or other relatives of Willie Jo Mills.

l. violation of Sherry Johnston's Fourteenth Amendment due process rights to meaningful hearings;

m. violation of Willie Jo Mills' Fourteen Amendment due process rights to meaningful hearings;

n. violation of the implementing regulations for these statutes.

8. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

9. Plaintiff also brings claims arising under state law including the defendants' violations of certain provisions of the Texas Estates Code [formerly the Texas Probate Code], delineated below (although in some instances the Estates Code, itself, violates the ADA and other federal statutes); the Wrongful Death Act, as well as common law claims of intentional infliction of emotional distress, conspiracy, fraud, breach of fiduciary duty and defamation, pursuant to pendent state law jurisdiction.

10. Jurisdiction is proper in the United States District Court for the Southern District of Texas (Houston Division) under 28 U.S.C. § 1441(c) because plaintiff has alleged claims arising under the Constitution, laws, or treaties of the United States.

11. This case is, in part, a disability discrimination matter brought under the Americans With Disabilities Act 1990 (as amended) (the "Act"); 42

U.S.C. § 12101 *et seq*. ("ADA") and the ADAAA; and in particular under Title II of the Act; 42 U.S.C. §12131 *et seq*.; 28 C.F.R. Part 35; and, Section 504 of the Rehabilitation Act of 1973; 29 U.S.C. § 790 *et seq*.

12. Willie Jo Mills was a "qualified individual with a disability" as defined by the Act at 42 U.S.C. § 12131(2); [3] see also, 28 C.F.R. §§35.104 and 35.108(b)(1-2) and (c)(1)(I-ii), Definitions.

13. Defendant, Harris County, is a "public entity" as defined in and under the Act, see 42 U.S.C. § 12131; see also 28 C.F.R. §35.104.

14. The remaining defendants, in all capacities pled, David Dexel, Tamorah C. Butts (Christine Butts), Ginger Lott; GSL Care Management, LLC, Clarinda Comstock, Howard Reiner, Sherrie Fox, collectively, were responsible for developing, implementing, accommodating, and/or administering to Willie Jo Mills the services, programs, and activities of

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[3] § 12131. Definition
As used in this title:
(1) Public entity. The term "public entity" means--
(A) any State or local government;
(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act [49 USCS § 24102(4)].
(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Harris County in and under their immediate control and supervision.

15. Sherry Johnston seeks damages for what she complains is a habit, pattern, and practice of disability discrimination by the defendants, whether individually, collectively and/or collectively in concert, in violation of 42 U.S.C. § 12132;[4] 28 C.F.R. § 35.130; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 790, *et seq*.

16. Sherry Johnston seeks damages for what she complains is a habit, pattern, and practice of retaliatory discrimination by the defendants, whether individually, collectively and/or collectively in concert, in violation of 42 U.S.C. § 1983 for Sherry Johnston's and Willie Jo Mills' exercise of freedom of speech and freedom of association under the First Amendment;

17. On July 22, 2009, the then-judge of Harris County Probate Court No. 4 found Willie Jo to be a disabled adult person in need of a court-appointed guardianship, see Exhibit H, Order Appointing David Dexel Guardian of the Person.

18. By virtue of the Order of Guardianship, Willie Jo Mills, "was a qualified individual with a disability" as contemplated under the ADA.

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[4] § 12132. Discrimination
Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

19. For the last eight years of Willie Jo Mills' life, plaintiff, Sherry Johnston, (as well as her sister, Cindy Pierce, and Sherry's daughter, Betty Jo Luckey) advocated for Willie Jo's constitutionally-protected liberty interests provided in and under the First Amendment:

a. right of free speech;

b. right of free association with family and friends

a. rights of privacy together with;

b. rights of personal autonomy; and

c. free choice and self-determination; and

d. right to be free of retaliatory discrimination for exercise of freedom to speak out on matters of public concern,
all guaranteed in, by, and under, the First Amendment as made applicable to the states by the Fourteenth Amendment.

20. The First Amendment to the United States Constitution guarantees Sherry Johnston's rights to freely and routinely associate with, and provide emotional support and informed perspective to, the disabled Willie Jo Mills. By the defendants' acts and failures to act, acting in concert, jointly and severally and conspiring to do so, Sherry Johnston was prevented from exercising such constitutional right.

21. The First Amendment to the United States Constitution guaranteed the rights of Willie Jo Mills, a disabled adult, to freely and routinely

associate with, and be provided with emotional support and informed perspective by, Sherry Johnston (and Cindy Pierce and Betty Jo Luckey, *supra*, although not plaintiffs herein). By the defendants' acts and failures to act, acting in concert, jointly and severally and conspiring to do so, Willie Jo was prevented from exercising her constitutional rights under the First Amendment.

22. The actions, inactions, and conspiracy of all defendants led to Willie Jo's completely avoidable, and painful death during the guardianship instituted and controlled by defendants under color of state law, which was in violation of federal law.

I. Facts Specific to Each Defendant
David Dexel, Guardian of the Person of Willie Jo Mills

23. Facts specific to David Dexel, Guardian of the Person of Willie Jo Mills are set out hereinafter.

a. On July 22, 2009, after the Settlement Agreement (Exhibit G), Dexel was appointed Guardian of the Person of Willie Jo Mills and her assets were placed into an 867 Management Trust.

b. Dexel had used Ginger S. Lott to serve as care manager for Dexel (at least for Willie Jo) after Lott's retirement/resignation as the 20-plus year coordinator for Probate Court No. 4. Lott was familiar with Willie Jo through Dexel's appointment as guardian of the person of Willie Jo.

c. As guardian of the person of Willie Jo Mills, Dexel's duties were defined by the Texas Probate Code §767:

Prob Code §767 - Power & Duties of Guardians of the Person
(a) the guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has:
(1) the right to have physical possession of the ward and to establish the ward's legal domicile;
(2) the duty to provide care, supervision, and protection for the ward;
(3) the duty to provide the ward with clothing, food, medical care, and shelter;
(4) The power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward;
(5) [This section not applicable to this case.]
(b) [This section not applicable to this case.]

d. As set forth below, Dexel's breach of his fiduciary duties to Willie Jo Mills, in the conspiracy with Lott, Comstock, Judge Butts, Howard Reiner, Sherrie Fox and Harris County, caused the death of Willie Jo Mills and the damages to Sherry Johnston.

e. After the settlement of the lawsuit against Larry Mills, Sherry Johnston worked closely with Dexel throughout 2009 up through 2012, taking care of Willie Jo on almost a daily basis at Silverado, the nursing home in which she was placed by Dexel.

f. Sherry Johnston began to be concerned at serious deterioration in care for her mother in the late fall of 2012, when the resident administrator left and management changed at Silverado.

g. Sherry Johnston expressed her concerns to Dexel about the short-staffing conditions at Silverado adversely affecting Willie Jo, which continued throughout 2012 and up through the spring of 2013.

h. Sherry's [and her sister, Cindy's] concern at Silverado's lack of

care for Willie Jo, leading to Willie Jo's hospitalizations for multiple UTIs (urinary tract infections) was communicated to Dexel in April, 2013. Because Dexel refused to relocate Willie Jo due to Silverado's lack of care, Sherry's [and Cindy's] relationship with Dexel as guardian of Willie Jo's person had seriously deteriorated as of April, 2013.

i. On May 16, 2013, with no notice to Sherry, Willie Jo was moved to a separate section of Silverado in which the residents were more cognitively declined and more hostile, with behavior problems which made them more aggressive and dangerous to Willie Jo.

j. Willie Jo's physical condition made her unable to protect herself from aggressive behavior of the residents in the new "neighborhood" of Silverado to which Dexel moved her.

k. Sherry's continuing complaints at the lack of care for Willie Jo and the deterioration of Silverado's services to Willie Jo led to Sherry Johnston being banned on May 17, 2013, and told she could not return without a court order. Dexel worked with Silverado to prevent Sherry from returning

l. In June 17, 2013, after Silverado's short-staffing left Willie Jo alone in her wheelchair, Willie Jo fell out of her wheelchair, caught her leg in the wheel, and broke both bones in her right leg above the ankle. Exhibit S, page 7

m. On June 17, 2013, Dexel made a secret, *ex parte*, oral motion to Judge Butts to appoint a guardian ad litem (later reduced to writing and filed June 20, 2013). ". . . to represent the best interests of Willie Jo Mills regarding visitation, healthcare, and other matters relating to the Ward."

n. Dexel obtained the appointment of Comstock as guardian ad litem on June 17, 2013, with no notice to Sherry.

o. Dexel's written motion to appoint a guardian ad litem filed on June 20, 2013, after his June 17 *ex parte* meeting with Judge

Butts did not mention Willie Jo's broken leg or the manner in which she received it – neglect by Silverado – which was confirmation of Silverado's neglect and lack of care about which Sherry had vociferously complained to Dexel.

p. Neither Sherry nor Cindy Pierce were notified on June 17 of Dexel's intent to request a guardian ad litem be appointed, or the appointment of Comstock.

q. Dexel conspired with Comstock to protect Dexel for his acts and failures to act to protect Willie Jo from neglect and abuse at Silverado.

r. Dexel's acts, together with other defendants, by means of secret, *ex parte* meetings and/or hearings violated Willie Jo's and Sherry's (as well as Cindy Pierce's and Betty Jo Luckey's) rights of due process.

s. Dexel discontinued Willie Jo's physical therapy after Silverado allowed her to fall and break both bones in her leg.

t. Dexel's stopping Willie Jo's physical therapy caused her muscle contractures to worsen with her arms freezing up, to the point she could not hold a cup or fork.

u. With no ability to use her arms or hands, Willie Jo became totally dependent on others to eat or drink, and with Silverado's staffing problems, she frequently went without food and water, as evidenced by her 30-40 pound weight loss, twice.

v. Because of Willie Jo's multiple, continuing injuries and UTI infections due to Silverado's lack of care, Sherry demanded that Dexel move Willie Jo for her safety from Silverado, advising him that she intended to ask the Court to replace Dexel as Willie Jo's guardian.

w. Sherry Johnston, through counsel (not the undersigned), had multiple communications with Dexel that she and her sister, Cindy Pierce, were preparing to file an application for

appointment as guardian of the person of Willie Jo Mills.

x. Sherry's threat to seek his replacement as guardian contributed to Dexel's filing his Application to Resign and Appoint a Successor Guardian. Dexel's certificate of service on his application demonstrates that he served only Clarinda Comstock, the guardian ad litem and no one else with his application. Exhibit K

y. **On September 13, 2013**, Dexel set his notice of hearing for **September 24, 2013**, on his application to resign and appoint a successor guardian for Willie Jo Mills and served Comstock along with "Interested Parties" including Sherry (along with serving her brother and sister and the administrator at Silverado who had banned Sherry).

z. **Four (4) days later, on September 17, 2013**, Dexel, along with his "care manager" Lott; Comstock; and Christine Butts, participated in a secret, *ex parte* meeting/hearing – in which no court reporter's record was made – in which Judge Butts appointed Lott as successor guardian to Dexel of the person of Willie Jo Mills.

aa. Dexel participated in the secret, ex parte, unrecorded meeting/hearing to appoint his "care manager" Lott, as successor guardian notwithstanding his having notified "Interested Parties" including (Sherry and Cindy Pierce) of the hearing set for September 24 to appoint a successor guardian.

bb. Dexel was released as guardian of the person of Willie Jo on September 26, 2013.

cc. Dexel's participation and agreement with Comstock, Lott, and Christine Butts to secretly have his care manager (at least for Willie Jo), Lott, appointed as the successor guardian of Willie Jo Mills put Lott in control Willie Jo Mills' life. Lott's exercise of control of Willie Jo Mills caused her death.

II. **Facts specific to Ginger S. Lott Successor Guardian of the Person of Willie Jo Mills And GSL Care Management, LLC**

24. Acts and omissions of Ginger Lott, Successor Guardian of Willie Jo Mills, and as Member of GSL Care Management, LLC are set out below:

a. As [Successor] Guardian of the Person of Willie Jo Mills Lott acted and billed Willie Jo Mills through her limited liability company, GSL Care Management, LLC. See Exhibit I.

b. As guardian of the person of Willie Jo Mills, Lott's duties were defined from September 2013, by the Texas Probate Code until its repeal effective December 31, 2013.

c. Prob Code §767 - Power & Duties of Guardians of the Person
(a) the guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has:
(1) the right to have physical possession of the ward and to establish the ward's legal domicile;
(2) **the duty to provide care, supervision, and protection for the ward;**
(3) the duty to provide the ward with clothing, **food, medical care**, and shelter; (emphasis added)
(4) The power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward;
(5) [This section not applicable to this case.]
(b) [This section not applicable to this case.]
Texas Probate Code repealed January 1, 2014, and new Estates Code took effect January 1, 2014.

d. As of January 1, 2014, Lott's duties as guardian of the person of Willie Jo Mills were defined by the new Estates Code Chapter 1151:
Subchapter B. Powers and Duties of Guardians Relating to

Care of Ward
Sec. 1151.051. GENERAL POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a) The guardian of the person of a ward is entitled to take charge of the person of the ward.
(b) The duties of the guardian of the person correspond with the rights of the guardian.
(c) A guardian of the person has:
(1) the right to have physical possession of the ward and to establish the ward's legal domicile;
(2) **the duty to provide care, supervision, and protection for the ward;**
(3) **the duty to provide the ward with** clothing, **food, medical care**, and shelter; (emphasis added)
(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward;
(5) [This section not applicable to this case.] and
(6) [This section not applicable to this case.]
(d) [This section not applicable to this case.]
(e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:
(1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement before the eighth business day after the person's receipt of the notice; or
(2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day.
Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 982 (H.B. 2080), Sec. 16, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 14, eff. September 1, 2015.

e. Lott served as care manager for Dexel (at least for Willie Jo) after her retirement/resignation as 20-plus year coordinator for Probate Court No. 4, and she was familiar with Willie Jo through Dexel's appointment as guardian of the person of Willie Jo.

f. Lott had been Dexel's "care manager" during his appointment as Willie Jo's guardian. Lott had been copied on emails between Dexel and Sherry and was aware of Sherry's multiple, continuing complaints of neglect by Silverado and her intent to seek another guardian.

g. On information and belief, Lott was copied on Dexel's Application for Leave to Withdraw as Guardian of the Person of Willie Jo Mills, so that Lott could be appointed successor guardian of the person of Willie Jo Mills.

h. As set forth below, Lott's breach of her fiduciary duties to Willie Jo Mills, in the conspiracy with Lott, Comstock, Judge Butts, Howard Reiner, Sherrie Fox and Harris County, caused the death of Willie Jo Mills and the damages to Sherry Johnston.

i. **On September 17, 2013 – four (4) days after sending notice of a hearing for September 24, 2013,** Lott, with Dexel, Comstock, and Christine Butts, participated in a secret, *ex parte* meeting/hearing – for which no court reporter's record was made – in which Judge Butts appointed Lott as successor guardian to Dexel of the person of Willie Jo Mills.

j. On or about October, 2013, Lott moved Willie Jo from Silverado to the Hampton nursing home.

k. Lott knew that Willie Jo was a stroke patient and on or about March 18, 2014, that her doctor advised Lott that Willie Jo needed to see a cardiologist and an endocrinologist. See Exhibit Q. Lott never followed up on that medical recommendation.

l. On or about April 20, 2014, Sherry texted Lott that Willie Jo was delirious and unresponsive with pus in her catheter, and needed immediately to be taken to the emergency room. Lott never answered Sherry's text.

m. When Lott refused to answer Sherry's text, Sherry called 911 for help for her mother.

n. Instead of responding to Sherry's text and delaying Willie Jo's getting care, Lott instructed the Hampton personnel to turn away the paramedics Sherry called.

o. Lott later called her own ambulance to send Willie Jo to Methodist Hospital with a note on her stomach, stating that Willie Jo had pus in her urine, but cutting off critical information concerning intake and output out of Willie Jo's medical records sent with her.

p. Although Lott was the only person with legal authority to sign Willie Jo into the hospital, Lott never appeared to sign her in – Willie Jo had to sign herself in. For the entire duration of Willie Jo's hospitalization Lott failed to appear. Notably, Willie Jo almost died from the long list of health problems from which she was suffering due to neglect.

q. When Sherry continued to uncover evidence of neglect of Willie Jo at successive facilities and challenged Lott's actions and failures to act as guardian, Lott retaliated against Sherry by banning her visitation.

r. Lott allowed Willie Jo's care givers to double-diaper her even though Willie Jo had a history of multiple UTIs causing hospitalization.

s. Lott used an out-of-hospital DNR (Do Not Resuscitate) order to justify withholding nutrition and hydration to Willie Jo at a time when Methodist Hospital's testing found no swallowing problems for Willie Jo.

t. Lott's refusal to provide anything other than thickened water to Willie Jo caused her death by starvation and malnutrition.

III. Facts specific to Clarinda Comstock Guardian ad Litem for Willie Jo Mills

25. Acts and omissions of Clarinda Comstock are set out below:

a. On June 17, 2013, the same day Silverado allowed Willie Jo to fall and break her leg, Judge Butts appointed Comstock as Willie Jo's guardian ad litem, on Dexel's made his oral, *ex parte* motion. Dexel's written motion filed June 20, 2013, did not mention Willie Jo's broken leg.

b. On June 17, 2013 (up through December 31, 2013), Comstock's duties as guardian ad litem were defined by the Texas Probate Code Chapter 645 in effect at the time as:

(c) guardian ad litem is an officer of the court. The guardian ad litem **shall protect** the incapacitated person whose interests in a manner that will enable the court to determine what action will be in the best interests of the incapacitated person. (Emphasis added.)
Texas Probate Code, Sec. 645 (c)(repealed effective January 1, 2014)

c. As of June 17, 2013 (up through December 31, 2013), Comstock's immunities were defined by the Texas Probate Code Sec. 645A:
Subject to Subsection (b), a guardian ad litem appointed under Section 645, 683, or 694A of this code to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) Subsection (a) of this section does not apply to a recommendation or opinion that is:
(1) wilfully wrongful;
(2) given with conscious indifference to or reckless disregard for the safety of another;
(3) given with in bad faith or with malice; or
(4) grossly negligent. Tex. Prob. Code §645A (b) (1-3)

d. As of January 1. 2014, Comstock's duties were re-defined in the new Texas Estates Code as:
(b) A guardian ad litem **shall protect** the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests.
(c) The guardian ad litem shall:
(1) investigate whether a guardianship is necessary for the proposed ward; and
(2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.
(d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court.
(Emphasis added.)
Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014. Amended by: Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 5, eff. September 1, 2015.

e. Comstock conspired with Dexel to protect him for his acts and failures to act to protect Willie Jo from neglect and abuse at Silverado.

f. Comstock conspired with Dexel to prevent Willie Jo's daughters, particularly Sherry, from protecting Willie Jo from the neglect and abuse at Silverado for which Sherry made multiple outcries to Dexel; then to Lott; then to Judge Butts, all to no avail.

g. Although Comstock conducted what she termed an "investigation" after her appointment, she never called key

witnesses, such as Willie Jo Mills' primary caretaker, who would have confirmed the neglect and dangerous conditions at Silverado that Sherry had been reporting to Dexel – to no avail.

h. Sherry's threat to seek his replacement led to Dexel's filing his Application to Resign and Appoint a Successor Guardian. Dexel's certificate of service on his application demonstrates that he served only Comstock, the guardian ad litem, and no one else, with his application. See Exhibit K.

i. On September 13, 2013, Dexel set his notice of hearing for **September 24, 2013**, on his application to resign and appoint a successor guardian for Willie Jo Mills and served Comstock along with "Interested Parties" including Sherry (along with serving her brother and sister and the administrator at Silverado who had banned Sherry).

j. Comstock participated in the conspiracy to appoint Lott as successor guardian to Dexel by preparing a report to the court – replete with misrepresentations about Sherry.

k. Comstock conspired with Dexel, Silverado, and Lott to cover up injuries to Willie Jo by demanding Sherry not photograph her mother's wounds, her bandaged leg and other injuries caused by Silverado's neglect.

l. Comstock deliberately mischaracterized Sherry's understanding of her mother's health problems and treatment needs by gross exaggerations that did not reflect Sherry's concerns.

m. Comstock falsely stated that Sherry denied her mother was incapacitated and that she was opposed to medical treatment in favor of natural alternatives. This was an additional attempt to malign Sherry, who merely insisted upon good nutrition to supplement fluids and vitamins Willie Jo was not receiving.

n. One of the glaring misrepresentations in Comstock's report was the allegation that Willie Jo was evicted due to Sherry's conduct – which was nothing more than Sherry's (futile) attempts to

force Dexel to perform his duties – particularly: "(2) the duty to provide **care, supervision, and protection** for the ward."

o. **On September 16, 2013**, Comstock filed her "report,"of her "investigation" of Willie Jo Mills with the Court just coincidently in time for the secret, *ex parte*, un-recorded hearing held the next day, as set out below.

p. Comstock served only Dexel (and presumably also Lott through Dexel) with her report, and she did not serve Sherry, although Comstock had received Dexel's letter and notice of hearing in which Sherry was addressed as "interested party." See Exhibit L.

q. **On September 17, 2013 – four (4) days after sending notice of a hearing set September 24, 2013**, Comstock, with Dexel, along with his "care manager" Lott; and Christine Butts, participated in a secret, *ex parte* meeting/hearing – in which no court reporter's record was made – and in which Judge Butts appointed Lott as successor guardian to Dexel of the person of Willie Jo Mills.

r. Comstock participated in the secret, *ex parte*, unrecorded meeting/hearing to appoint Dexel's "care manager" Lott, as successor guardian notwithstanding Comstock's having seen that "Interested Parties" including (Sherry and Cindy Pierce) were notified of the hearing set for September 24 to appoint a successor guardian.

s. Comstock's protection of Dexel as guardian was subsequently extended to protection of Lott as [successor] guardian, to the detriment of Willie Jo, leading to her death, and to the detriment of Sherry.

t. When questioned by investigators of the Judicial Branch Certification Commission (JBCC) Comstock covered up Lott's abuse and neglect by a distorted interpretation of an out-of-hospital DNR executed by Willie Jo.

u. Comstock contributed to Willie Jo's emotional isolation by assisting Silverado in keeping Willie Jo away from her daughter, Sherry, because of Sherry's multiple outcries of abuse and neglect.

v. Comstock interfered with the appointment of Willie Jo's daughter, Cindy Pierce, solely based on the fact that Larry Mills had conflict with his sisters, when his conflict should never have trumped Willie Jo's advanced directives and desires to have Sherry or Cindy be her guardian.

w. Comstock attempted to block the appointment of Cindy Pierce, Willie Jo's daughter, by filing a motion for security for costs of $75,000 pursuant to Texas Estates Code § 1052, the "Pay to Play," provision — for which Sherry also includes hereinafter a challenge to the constitutionality of the Texas Estates Code.

IV. Facts specific to Howard Reiner Attorney ad Litem for Willie Jo Mills

26. Set out below are the acts of Howard Reiner which violated the rights of Willie Jo Mills, his client, and the rights of Sherry Johnston.

a. Reiner's duties as attorney ad litem were defined by the Texas Estates Code Chapter 1054. Court Officers and Court-appointed Persons
Sec. 1054.054. DUTIES. (a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:
(1) the law and facts of the case;
(2) the proposed ward's legal options regarding disposition of the case;
(3) the grounds on which guardianship is sought; and
(4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of

a guardian.
(b) Before the hearing, the attorney ad litem shall review:
(1) the application for guardianship;
(2) certificates of current physical, medical, and intellectual examinations; and
(3) all of the proposed ward's relevant medical, psychological, and intellectual testing records.
(c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem's opinion regarding:
(1) whether a guardianship is necessary for the proposed ward; and
(2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services. (Emphasis added)
Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014. Amended by: Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 4, eff. September 1, 2015.

b. Reiner, as attorney ad litem, has no immunities granted by the Estates Code.

c. Reiner was appointed attorney ad litem for Willie Jo Mills on July 1, 2009.

d. After Reiner was appointed as attorney ad litem he participated in a settlement agreement to settle the 2008 lawsuit filed by Cindy Pierce and Sherry Johnston against their brother, Larry Mills for conversion of Willie Jo's financial assets and property and locking Willie Jo out of her home. Cause No. 2008-28128; in the 165th District Court of Harris County.

e. On or about July 22, 2009, Reiner, Cindy Pierce, Sherry Johnston, Larry Mills, and David Dexel executed a settlement agreement settling the lawsuit referenced above which had been transferred to Probate Court No. 4. See Exhibit G, Settlement Agreement, annotated with the annotations highlighted.

f. On July 22, 2009, Howard Reiner was attorney ad litem for Willie Jo Mills, however **acting for himself, and not Willie**

Jo Mills, Reiner signed the settlement agreement on his own behalf, attempting to shield himself from future negligence or other bad acts.

g. Also among the signatories was David Dexel **as Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills, who also signed for himself and not Willie Jo Mills.**

h. The signatories to the settlement agreement released each other as of that date, and **in the capacities existing as of that date**, for the causes of action named as of that date **and no other**.

i. Sherry Johnston did not and legally could not pre-release Dexel and/or Reiner for future negligence; future conspiracy; and/or the future bad acts.

j. The Agreement was fatally defective by omitting either the signature of Willie Jo Mills, or **by Reiner on behalf of Willie Jo Mills Attorney ad Litem for Willie Jo Mills**. Significantly, at page 7, ¶ 3.10 a. viii Reiner signs only for himself, not on behalf of Willie Jo Mills.

k. Other than references to settling the claims for conversion Willie Jo Mills was not a party to the Agreement terminating her freedom and imposing a guardianship and neither Howard Reiner nor David Dexel signed for her on her behalf. Instead, Reiner signed for Reiner and Dexel signed for Dexel.

l. At no place in the Settlement Agreement was there a waiver of right by Sherry Johnston or by Cindy Pierce to serve as Willie Jo's guardian of her person.

m. Reiner failed to advocate for Willie Jo's wishes, despite the fact that he knew what she wanted and her wishes that Sherry or Cindy Pierce be her guardian. See Exhibit B, Court Investigator's Report.

n. Reiner conspired with Dexel in the creation of this guardianship in 2009, which continued until Willie Jo's death in 2014.

o. Reiner conspired with Dexel to coerce Sherry Johnston and Cindy Pierce to sign an illegal Settlement Agreement, which was ineffective by the lack of Willie Jo Mills' signature or the signature of anyone in any capacity as representing Willie Jo Mills. In doing so, Reiner impermissibly waived his client's constitutional rights, when he had no right to do this and violated his duties to Willie Jo.

p. Even after Reiner witnessing Willie Jo's decline under Lott's guardianship and acknowledged that Cindy Pierce was more suitable than Lott, even after Reiner was presented with evidence that Willie Jo was in danger because Lott was failing in her duties to protect her, Reiner took no action to protect Willie Jo from harm. See Exhibits N, O, R, S.

q. Even after knowing that Lott was failing in her duties to protect Willie Jo, Reiner persisted with a motion to declare that Pierce had waived her right to serve, using the 2009 Settlement Agreement which contained no waiver of Cindy Pierce's right to serve.

r. Against Willie Jo's wishes for her daughter(s) to serve as her guardian, Reiner obtained Judge Butts' order declaring that Pierce had waived her right to serve.

s. Reiner threatened to prosecute Sherry and her counsel with false accusations of wiretapping when he knew that a that a drop camera for the protection of Willie Jo was authorized by Lott in December of 2013.

t. Reiner vigorously – and successfully – fought Cindy Pierce's and Betty Jo Luckey's attempts to secure a jury trial, remove Lott, and be appointed as successor guardian.

u. Reiner vigorously – and successfully – advocated for Lott to continue as guardian of Willie Jo and Lott remained so, causing

Willie Jo's death.

VI. Facts specific to Hon. Christine Butts Judge of Probate Court No. 4, Harris County, Texas

27. Set out below are the acts of Christine Butts, statutory judge of Harris County Probate Court No. 4.

a. Christine Butts' position as statutory probate judge in Harris County, mandates that she have a bond of $500,000 set by Texas Government Code §25.00231, *et seq*.

b. Up through December 31, 2013, Judge Butts' diligence was mandated and her liability for neglect of her duties was set out in Texas Probate Code §671, *et seq*.:
Subpart I. Duty and Responsibility of Court
Sec. 671. Judge's Duty.
(a) The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that pertain to the guardian's ward.
(b) The judge, at least annually, shall examine the well-being of each ward of the court and the solvency of the bonds of the guardians of the estates.
(c) If after examining the solvency of a guardian's bond under this section a judge determines that the guardian's bond is not sufficient to protect the ward or the ward's estate, the judge shall require the guardian to execute a new bond.
(d) The judge shall notify the guardian and the sureties on the bond as provided by law. **If damage or loss results to a guardianship or ward because of gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this section, the judge shall be liable on the judge's bond to those damaged by the judge's neglect.**

> (e) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, ward, or guardian, including social security numbers, in addition to identifying information the applicant or fiduciary is required to produce under this code. The court shall maintain the information required under this subsection, and the information may not be filed with the clerk.
> Texas Probate Code, Sec. 671, *et seq*. (repealed effective January 1, 2014) (Emphasis added.)

c. Beginning January 1, 2014, Judge Butts' diligence was mandated in the new Estates Code at Sec. 1201.001, and Judge Butts' liability for neglect of her duties was found in Section 1201.003:
1201.001 - Determining Guardian's Performance of Duties - The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian's ward.
1201.003 - Judge's Liability
A judge is liable on the judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter.
The case of *James v. Underwood*, 438 S.W.3d 704, 714 (Tex. App.–Houston [1st Dist.] 2014, no pet.), is instructive for the extent of Judge Butts' immunity in this case:

> Section 1201.003 provides a limited waiver of judicial immunity, allowing recovery for losses directly tied to the judge's duties under the subchapter. Those duties include the use of reasonable diligence to determine whether an appointed guardian is performing the required duties . . . .

d. On June 17, 2013, Judge Butts allowed Dexel to have *ex parte* contact with her to request appointment of a guardian ad litem for Willie Jo and appointed Comstock in response to Dexel's oral request, with no notice to Sherry Johnston or Cindy Pierce, Willie Jo's daughters.

e. Judge Butts violated Willie Jo's and Sherry's rights of due process by her *ex parte* communications with Dexel and other parties, using Sherrie Fox to communicate *ex parte* to only certain parties, to the exclusion of Sherry and her sister, Cindy Pierce, and Betty Jo Luckey, Willie Jo's granddaughter-applicant.

f. On December 6, 2013, (on information and belief according to Fox), Fox presented Judge Butts with an Emergency Application for Temporary Restraining Order for the protection of Willie Jo Mills. See Exhibit N.

g. Judge Butts refused to hold an emergency hearing on the emergency TRO, even though she was presented with evidence of Lott's failing in her duties as guardian of the person of Willie Jo, to the extent Willie Jo's life was threatened. Instead, according to Fox, a "hearing would be set" and a hearing was set as a "status conference" ten days later on December 16, 2016. See Exhibit P.

h. On April 28, 2014, Sherry filed her First Amended Application for TRO vs. Ginger Lott for Willie Jo's protection. See Exhibits R and S

i. Citing "no emergency" Judge Butts refused to set a hearing and directed Fox to so inform Sherry's counsel. See Exhibit U.

j. Judge Butts conspired with all defendants to violate Willie Jo's and Sherry's rights of due process and prolonged the litigation through failing to set a trial date and attendant scheduling order, and refusing to hold hearings on emergency motions to remove Lott for abuse and neglect of Willie Jo; for refusing to hear three motions for jury trial.

k. Judge Butts was deliberately and consciously indifferent to Willie Jo's rights of due process; to her rights to be protected by her guardian.

l. Judge Butts failed to use reasonable diligence to determine whether Lott as Willie Jo's guardian was performing all of the duties required of her.

m. Judge Butts ignored Sherry's repeated alarms that Willie Jo was on the brink of death multiple times and begging the court to intervene, to no avail.

n. Judge Butts ignored every warning in favor of discrediting the messenger, Sherry Johnston, who was clearly the scapegoat of Dexel and Lott to cover up their neglect and abuse of Willie Jo.

o. Even with Sherry's verified motions warning of Willie Jo's impending death, Judge Butts failed to confirm that Lott was performing all her duties as required. Judge Butts refused to hear evidence in the multiple emergency motions filed by Cindy Pierce and Betty Jo Luckey, applicants, over the course of a year—the last of which was filed two days before Willie Jo died.

p. Judge Butts refused to respond to three motions for jury trial of applicant Betty Jo Luckey, who was in all ways qualified and had a prior right of appointment when compared with Lott. Luckey never signed a waiver or right to serve and her affidavit of inability to pay was never challenged, rendering it effective as a matter of law.

VII. Facts specific to Sherrie Fox Guardianship Coordinator "Gatekeeper" for Judge Butts

28. Set out below are the facts regarding Sherrie Fox's acts in violation of the rights of Willie Jo Mills and Sherry Johnston.

a. Sherrie Fox is an employee of Harris County, assigned to Probate Court No. 4 as guardianship coordinator for Judge Butts.

b. On December 6, 2013, Sherry (through counsel) presented Fox with an Emergency Application for Temporary Restraining Order for the protection of Willie Jo Mills to take to Judge Butts to set an emergency hearing. See Exhibit N.

c. Fox took the photographs and pleading to Judge Butts and came back saying she was going to set a hearing – which she set for December 12, and then re-set it for December 16, 2013, albeit setting it as a status conference. See Exhibit P.

d. Fox routinely had *ex parte* communications with Dexel, Lott, Comstock, and Reiner, but chastised Sherry Johnston for including her on a group email to all parties, trying to get medical attention for her ill mother.

e. Fox conspired with Lott, Dexel and Comstock against Sherry (and Cindy and Betty Jo, as applicants) by contacting Larry Mills and inquiring whether he wished to be appointed as guardian of the person of Willie Jo.

f. Fox failed to notify Sherry of having contacted Larry Mills in order to facilitate Judge Butts' appointment of Lott.

g. Fox conspired with defendants and refused to schedule a trial on Betty Jo Luckey's application for to be appointed successor guardian when no party nor the county had timely filed an objection to challenge Betty Jo's affidavit of inability to pay [under the Pay to Play statute]. See Exhibit T.

VIII. Facts specific to Harris County, Texas Liability for its Elected Official (Judge Butts) and Employee (Sherrie Fox)

29. The acts and omissions of Harris County which violated the rights of Willie Jo Mills and Sherry Johnston are set out below.

a. Judge Butts is an elected official of Harris County, Texas, for whom Harris County has purchased a Five Hundred Thousand Dollar ($500,000) bond to ensure her diligence in carrying out her duties as a Harris County statutory probate judge.

b. Judge Butts, in her capacity as a Harris County statutory probate judge, continued a guardianship of Willie Jo Mills which began in 2008, and appointed guardians who locked Willie Jo in a location from which only the guardians had the right(s) to release her.

c. Judge Butts, in her capacity as a Harris County statutory probate judge, appointed both a guardian ad litem and an attorney ad litem over Willie Jo Mills.

d. Judge Butts in her capacity as a Harris County statutory probate judge, failed to ensure the safety of Willie Jo Mills, a person over whom she had taken custody via guardianship, violating the Willie Jo's rights under the 14th amendment to the United States Constitution and violating 42 U.S.C.§ section 1983.

e. Harris County, through its elected official, Judge Butts in her capacity as a Harris County statutory probate judge, failed to ensure the safety of Willie Jo Mills, a person over whom it had taken custody via guardianship ruled on by Judge Butts, violating the 14th amendment to the United States Constitution and violating 42 U.S.C.§ section 1983.

f. Harris County violated Sherry Johnston's rights by denying her access to her mother, Willie Jo Mills - associational discrimination – when Willie Jo was in the custody and control of Harris County.

g. Harris County has no ADA training program, so it regularly allows Judge Butts in her capacity as a Harris County statutory probate judge, to appoint guardians and both attorneys and guardians ad litem who are not qualified under the ADA to assess the supports and services wards may need, thus violating

the ADA.

h. Sherrie Fox is an employee of Harris County who acts as the guardianship coordinator for Judge Butts in her capacity as a Harris County statutory probate judge.

i. Sherrie Fox in her official capacity as a Harris County employee assigned as guardianship coordinator for Judge Butts participated in carrying out each order or directive of Judge Butts as it relates to Willie Jo Mills.

j. Sherrie Fox in her official capacity as a Harris County employee assigned as guardianship coordinator for Judge Butts, conspired with each of David Dexel, Howard Reiner, Judge Butts, Clarinda Comstock, Ginger Lott, and GSL Care Management, LLC in every action taken in the guardianship of Willie Jo Mills.

k. Harris County has a habit and practice of violating the due process rights of wards in guardianship by not allowing them access to justice in the form of attending hearings at which their rights are compromised.

IX. Various Applicable Statutes

30. Sec. 1054.056. IMMUNITY. (a) Subject to Subsection (b), **a guardian ad litem** appointed under this subchapter or Section 1102.001 or 1202.054 to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) This section does not apply to a recommendation or opinion

that is:

(1) wilfully wrongful;
(2) given:
(A) with conscious indifference to or reckless disregard for the safety of another;
(B) with malice; or
(C) in bad faith; or
(3) grossly negligent.
Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

31. The following causes of action are brought, in part, as survival actions following the death of Willie Jo Mills, by Sherry Johnston, a surviving heir of Willie Jo Mills:

a. Any cause of action involving personal injury to the decedent's health, reputation, or person. Civil Practice and Remedies Code §§ 71.021 and 71.022.

b. Statutes of limitations for survival actions are tolled in the case of Willie Jo Mills because of her disability. § 16.001 Civ. Prac. & Rem. Code No statute of limitations would begin to run until the occurrence date of the death of Willie Jo Mills, September 27, 2014.

FIRST CAUSE OF ACTION - AMERICANS WITH DISABILITIES ACT (ADA/ADAAA)

32. Willie Jo Mills was a "qualified individual with a disability" as defined by the Act at 42 U.S.C. § 12131(2); see also, 28 C.F.R. §§35.104 and 35.108(b)(1-2) and (c)(1)(I-ii), Definitions.

33. Defendant, Harris County, is a "public entity" as defined in and under

the Act, see 42 U.S.C. § 12131; see also 28 C.F.R. §35.104.

34. The remaining defendants, in all capacities pled, David Dexel, Tamorah C. Butts (Christine Butts), Ginger Lott; GSL Care Management, LLC, Clarinda Comstock, Howard Reiner, Sherrie Fox, collectively, were responsible for developing, implementing, accommodating, and/or administering to Willie Jo Mills the services, programs, and activities of Harris County in and under their immediate control and supervision.

35. Sherry Johnston seeks damages for what she complains is a habit, pattern, and practice of disability discrimination by the defendants, whether individually, collectively and/or collectively in concert, in violation of 42 U.S.C. § 12132; 28 C.F.R. § 35.130; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 790, *et seq*.

SECOND CAUSE OF ACTION - ADA - RETALIATION - 42 U.S.C. § 12203
[note: prior slander, libel and defamation pendent state claim is now subsumed into this cause of action, ADA retaliation claim and into the 42 U.S.C. § 1982 First Amendment Retaliation Claims

36. Sherry Johnson is an "individual" under 42 U.S.C. § 12203(a) who was discriminated against by Defendants because she opposed acts and practices related to the treatment and/or lack of treatment of her mother, Willie Jo Mills, done in violation of the provisions of the ADA/ADAAA

37. Willie Jo Mills was an "individual" under 42 U.S.C. § 12203(a) who was discriminated against by Defendants because she opposed acts and practices related to the treatment and/or lack of treatment of herself, done in violation of the provisions of the ADA/ADAAA.

THIRD CAUSE OF ACTION - 42 U.S.C. § 1983 - FIRST AMENDMENT VIOLATIONS

38. Freedom of Speech; Freedom of Association; Retaliation for exercise of free speech and association. All facts set out above are incorporated herein as if fully recited verbatim. Specifically paragraphs 1 through 37 above establish the facts upon which plaintiff relies to support this cause of action. This cause of action is asserted against defendants Dexel, Lott, Comstock, Reiner, Butts, and Fox.

39. By reason of the First Amendment to the United States Constitution, Sherry Johnston and Willie Jo Mills are and were guaranteed the right to free speech, freedom of association, and freedom from retaliation for acts of free speech concerning matters of public concern. These rights are made applicable to the States via the Fourteenth Amendment to the United States Constitution.

40. The defendants violated Sherry Johnston's and Willie Jo Mills' rights to free speech and freedom of association while acting under color of state

law and regulations. At all relevant times the individual defendants acted in the performance of their official duties in furtherance of official policies and customs.

41. Conduct of the defendants directed towards Sherry Johnston and/or Willie Jo Mills was in retaliation for the exercise of the right to free speech and right to freedom of association by Johnston and Mills.

FIFTH CAUSE OF ACTION - 42 U.S.C. § 1983 - FIFTH AMENDMENT, DUE PROCESS CLAUSE

42. The due process clause of the Fifth Amendment provides that no person shall "be deprived of life, liberty or property, without due process of law." Deliberate indifference to the necessary food, nutrition and medical needs of Willie Jo Mills resulting in her death is a violation of the Fifth Amendment deprivation of life without due process of law.

43. When Willie Jo Mills was placed in a nursing home by the Defendants acting under color of state law, she ceased to be able to obtain her own medical treatment, her own food and nourishment and was in effect incarcerated by the County of Harris, who eventually controlled and limited access to Willie Jo Mills, just as a penal institution does.

44. Under these circumstances, Harris County and its agents servants and employees may not legally treat the necessary medical needs of Willie

Jo Mills with deliberate indifference, which they did.

45. Specifically, although lacking all medical knowledge, training and expertise, the following defendants, Dexel, Lott, Comstock and Reiner all participated in acts of deliberate indifference to the necessary medical needs of Willie Jo Mills. These acts and omissions included, but are not limited to the following:

a. 1. Ordering necessary medication prescribed by credentialed professional medical personnel to be withheld and the prescription(s) cancelled. (Forbidding Willie Jo to take the prescribed muscle cramping medicine)

b. Defendant Lott, purported to diagnose that Willie Jo had a "swallowing problem" and ordered the nursing home to only feed Willie Joe Mills water and "thickened water" which was insufficient to maintain life, in effect starving Willie Jo Mills to death. This action was taken in spite of a formal medical report from tests done at Methodist Hospital demonstrating that Willie Jo Mills did not have a swallowing problem.

c. Although taxed under the Probate and subsequent Estates Code with the duty to protect the ward, Willie Jo Mills, Defendant Comstock failed to take action to protect the ward in the matter of her necessary food and nutrition in to sustain life, and instead permitted the Guardian of the person of Willie Jo Mills, Ginger Lott, to continue the unauthorized practice and/or malpractice of medicine, and failed to bring any concern about the deteriorating physical condition of the ward to the attention of the Court as her appointment required her to do.

d. Failing to make a report of neglect and abuse of the elderly, as required per statute and in fact, actively participating in the neglect and abuse, resulting in the necessary assisting, participating and/or conspiracy of the defendants to conceal

from public view their nefarious complicity in the mistreatment of Willie Jo that took place over a period of some years and the resultant death of Willie Jo Mills.

e. The defendants jointly and severally acted and failed to act to protect the health, safety and life of Willie Jo with deliberate indifference to her necessary needs.

SEVENTH CAUSE OF ACTION - 42 U.S.C. § 1983 - FOURTEENTH AMENDMENT - DUE PROCESS CLAUSE

46. DELIBERATE INDIFFERENCE TO THE NECESSARY FOOD, NUTRITION AND MEDICAL NEEDS OF WILLIE JO MILLS

47. DENIAL OF MEANINGFUL HEARINGS

48. DENIAL OF RIGHT OF ACCESS TO COURTS

49. DENIAL OF RIGHT TO RECEIVE NOTICE OF COURT ACTION IN ADVANCE OF ANY ACTION BEING TAKEN

50. SUBJECTED TO IMPROPER *EX PARTE* ACTION BY THE DEFENDANTS

51. DEPRIVED OF ABILITY TO MAKE WARD'S POSITIONS KNOWN

52. SUBJECTED TO "PLAY TO PAY" CUSTOM AND PRACTICES OF HARRIS COUNTY PROBATE COURTS

53. DELIBERATE INDIFFERENCE TO THE NECESSARY FOOD, NUTRITION AND MEDICAL NEEDS OF WILLIE JO MILLS

54. When Willie Jo Mills was placed in a nursing home by the Defendants

acting under color of state law, she ceased to be able to obtain her own medical treatment, her own food and nourishment and was in effect incarcerated by the State, who eventually controlled and limited access to Willie Jo Mills, just as a penal institution does.

55. Under these circumstances, the state and its agents servants and employees may not treat the necessary food, nutrition, and medical needs of Willie Jo Mills with deliberate indifference, which they did.

56. Specifically, although lacking all medical knowledge, training and expertise, the following defendants, Dexel, Lott, Comstock and Reiner all participated in acts of deliberate indifference to the necessary medical needs of Willie Jo Mills. These acts and omissions included, but are not limited to the following:

a. 1. Ordering necessary medication prescribed by credentialed professional medical personnel to be withheld and the prescription(s) cancelled.

b. Defendant Lott, purported to diagnose a "swallowing problem" and ordered the nursing home to only feed Willie Jo Mills water and "thickened water" which was insufficient to maintain life, in effect starving Willie Jo Mills to death. This action was taken in spite of a formal medical report from tests done at Methodist Hospital demonstrating that Willie Jo Mills did not have a swallowing problem.

c. Although taxed under the Probate and subsequent Estates Code with the duty to protect the ward, Willie Jo Mills, Defendant Comstock failed to take action to protect the ward in the matter

of her necessary food and nutrition in to sustain life, and instead permitted the Guardian of the person of Willie Jo Mills to continue the unauthorized practice or malpractice of medicine, and failed to bring any concern about the deteriorating physical condition of the ward to the attention of the Court as her appointment required her to do.

d. Failing to make a report of neglect and abuse of the elderly, as required per statute and in fact, actively participating in the neglect and abuse, resulting in the necessary conspiracy of the defendants to conceal from public view their nefarious complicity in the mistreatment over a period of some years and the resultant death of the ward, Willie Jo Mills.

e. The defendants jointly and severally acted and failed to act to protect the health, safety and life of Willie Jo with deliberate indifference to her necessary needs.

57. **DENIAL OF MEANINGFUL HEARINGS:**

a. The right to a meaningful hearing includes, but is not limited to, the following:
Notice of Hearings to Be Held
Timely Notice of Each Hearing
Right to Be Present
Right to Be Heard
Right to a Record of the Proceedings
Right to Confront and Cross Examine Witness

58. All facts set out above are incorporated herein as if fully recited verbatim. Specifically paragraphs 1 - 37 above establish the facts upon which plaintiff relies to support this cause of action. this cause of action is asserted against defendants Dexel, Lott, Comstock, Reiner, Butts, and Fox.

59. By reason of the Fourteenth Amendment to the United States

Constitution, Sherry Johnston and Willie Jo Mills are and were guaranteed the right to confront the witnesses against them. These rights are made applicable to the States via the Fourteenth Amendment to the United States Constitution.

60. The defendants violated Sherry Johnston's and Willie Jo Mills' right to confrontation of the witnesses against them while acting under color of state law and regulations. At all relevant times the individual defendants acted in the performance of their official duties in furtherance of official policies and customs.

SEVENTH CAUSE OF ACTION - CONSPIRACIES TO VIOLATE CIVIL RIGHTS - 42 U.S.C. § 1985

PENDENT STATE CLAIM CAUSES OF ACTION:
NINTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTIES

TENTH CAUSE OF ACTION - CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY BY ASSISTING AND PARTICIPATING IN BREACHES OF FIDUCIARY DUTY OWED TO WILLIE JO MILLS

61. At various times different individual defendants were the primary actor in Breaching Fiduciary Duties owed to Willie Jo Mills. Initially the first primary actor was Reiner, the attorney ad litem for Willie Jo Mills. Reiner was assisted in breaching his fiduciary duties by the acts and

conduct of Butts.

62. The next primary actor was Dexel. Dexel was assisting in breaching his fiduciary duties by the acts and conduct of Dexel and Butts.

63. The next primary actor was Comstock, followed closely and in connection with primary actor Lott. Comstock was assisted in breaching her fiduciary duties by the acts and conduct of Dexel, Butts, Fox and later Lott.

64. Primary actor Lott was assisted in breaching her fiduciary duties by the acts and conduct of Butts and Sherry Fox.

65. Each defendant's, Reiner, Dexel, Butts, Lott and Fox, conduct in assisting and participating with the primary actor, respectively, constituted a breach of duty to Willie Jo Mills.

66. Defendant Butts had a duty pursuant to Estates Code § 1201.003 to use reasonable diligence in the performance of her duty under that subchapter. Butts' violations of her duty under Estates Code § 1201.003 also violated the federal regulations set forth herein.

67. Willie Jo Mills death occurred as a proximate result of the Defendants' breaches of duty, the Defendants' deliberate indifference to Willie Jo Mills' necessary food, nutrition and medical treatment needs, the Defendants' retaliatory acts in violation of ADA 42 U.S.C. § 12203; the

Defendants' retaliatory acts taken against Mills and Johnston in violation of Willie Jo Mills and Sherry Johnston's attempts to exercise their First Amendment Rights; the Defendants' deliberate and cruel infliction of intense emotional distress brought about by the emotional isolation inflicted upon Willie Jo Mills in violation of Mills First Amendment Rights; the Defendants' deliberate, cruel and unnecessary infliction of physical pain *via* the intentional deprivation of food and nutrition and required prescription medication required by Willie Jo Mills.

NINTH CAUSE OF ACTION - INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS

68. The elements of intentional infliction of severe emotional distress:

1. The plaintiff is a person;
2. The defendant(s) acted intentionally or recklessly;
3. The emotional distress suffered by the plaintiff was severe;
4. The defendant(s) conduct was extreme and outrageous;
5. The defendant(s) conduct proximately caused the plaintiff's emotional distress;
6. No alternative cause of action would provide a remedy for the severe emotional distress caused by the defendant(s) conduct.

69. In this case there are two persons, who suffered severe emotional distress. The first is the named Plaintiff, Sherry Johnston, and the second, by way of survivorship claim, is Willie Jo Mills.

70. The defendants, who participated in assisting each other in causing

Sherry Johnston and Willie Jo Mills severe emotional distress, acting in retaliation against Johnston and Mills with regard to their ADA and First Amendment rights in outrageous and extreme fashion as more fully set forth in detail in this pleading.

71. The conduct of defendants in denying the association of Johnston and Mills with each other, and Mills with other family members, proximately caused the respective emotional distress of Mills and of Johnston.

72. The thrust of the other causes of action asserted by Johnston on behalf of herself and Mills does not involve mental anguish damages.

73. Therefore there is no alternative cause of action capable of providing a monetary recovery for severe emotional distress, as found in the cause of action for intentional infliction of severe emotional distress.

TENTH CAUSE OF ACTION - WRONGFUL DEATH

74. As set out herein above, the defendants' wrongful, deliberately indifferent care or lack of care concerning the need to provide all of the necessary requirements of food, nutrition and medical needs of Willie Jo Mills, which deliberate indifference by the Defendants was a proximate cause of the wrongful premature death of Willie Jo Mills.

ELEVENTH CAUSE OF ACTION - FAILURE TO FULFILL STATUTORY DUTIES

TWELFTH CAUSE OF ACTION - *ULTRA VIRES* ILLEGAL, CRIMINAL, and WRONGFUL ACTS

75. The defendants, as identified below, committed the following illegal, and/or criminal and/or wrongful *ultra vires* acts in the course and scope of their employment and appointments.

76. Dexel, Lott, Comstock, Fox and Butts failed to report or take appropriate legal action when each became aware of the various injuries, neglect, abuse - physical and emotional - and mistreatment of Willie Jo Mills, which constituted a criminal case for "Injury to the Elderly."

77. Dexel learned of the negligence of the care home that he maintained a "business relationship" with when the under-staffing of employees resulted in the fall out of the chair of Willie Jo Mills, and did not report or take action to protect Willie Jo Mills.

78. Lott, successor to Dexel, learned of the broken leg incident and did not make a report of this neglect to any responsible body or agency taxed with investigating and taking action with regard to "Injury to the Elderly."

79. Lott began a deliberate course of conduct that ignored the advice and opinions of medical professionals and caused the nursing home to intentionally deprive Willie Jo Mills of food, nutrition and medical

attention and treatment, ultimately resulting in the death of Willie Jo Mills, in part because of starvation at the direction of Lott.

80. Lott engaged in the unauthorized practice of medicine, for which she is not licensed.

81. Lott engaged in the unauthorized practice of pharmacy, for which she is not licensed.

82. Defendant Comstock knew or should have known of the bizarre orders of Lott regarding the feeding of only water and thickened water to Willie Jo, had she read the medical file from Methodist Hospital or made any reasonable inquiry of the medical conditions, real or imagined by Lott, and the dramatic losing and gaining of weight of Willie Jo - while in Methodist Hospital, gaining weight, and when prematurely removed from the rehabilitation facility that Willie Jo had been discharged to by Methodist Hospital, and placed back in the nursing home, the dramatic and life threatening weight loss that only being fed water and thickened water brought about. Defendant Comstock was criminally negligent and reckless as well as deliberately indifferent to the food, nutrition and medical needs of Willie Jo Mills, whom she was required, by law and by her appointment to protect.

83. Defendant Sherry Fox, who Sherry Johnston was required to present

her pleadings and evidence to as a buffer to Judge Butts, was presented with evidence of shocking condition of Willie Jo Mills and the need for immediate hearing and action, who advised the Plaintiff that no action would be taken on the emergency TRO because trial would be held in two weeks in May of 2016. No trial was had and on September 27, 2014, Willie Jo Mills died.

84. Defendants Dexel, Lott, Comstock, and Reiner were freely able to communicate with Judge Butts ex parte - an illegal act(s).

INAPPLICABILITY OF IMMUNITY DEFENSES

85. Congress and the United States Supreme Court have abrogated a state's sovereign immunity for ADA claims as a valid exercise of Congressional power under § 5 of the Fourteenth Amendment to enforce the substantive guarantees of the Fourteenth Amendment. It includes that authority to remedy and the authority to deter violations of rights guaranteed by the Fourteenth Amendment. *Tennessee v. Lane, infra*.

86. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq*., seeks to enforce a prohibition on irrational disability discrimination. But it also seeks to enforce a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review. These rights include some, like the right of

access to the courts that are protected by the Due Process Clause of the Fourteenth Amendment. The Due Process Clause also requires the states to afford certain civil litigants a meaningful opportunity to be heard by removing obstacles to their full participation in judicial proceedings.

87. The ADA specifically abrogates sovereign immunity, see § 12202. See *Tennessee v. Lane*, 541 U.S. 509, 522 - 524, 124 S. Ct. 1978, 158 L.Ed.2d 820 (2004)

88. The United States Supreme Court has held that no state immunity protects conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983. See *Howlett v. Rose*, 496 U.S. 356, 376 (1990)

EXEMPLARY DAMAGES

89. The wrongful conduct of the Defendants was committed intentionally and with malice or alternatively with reckless disregard for the rights and sensibilities of the Plaintiff, and Willie Jo Mills prior to her wrongful death.

ATTORNEY'S FEES

90. Defendants' conduct as described in this petition, and the resulting damages and losses to Plaintiff have necessitated that Plaintiff retain an attorney to represent her in her claims against the defendants. Plaintiff is statutorily entitled to recover from Defendants an additional sum to

compensate Plaintiff for reasonable fees for such attorney's services and the preparation and prosecution of this action, as well as a reasonable fees for any and all appeals to other courts.

91. Plaintiff is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and to answer herein and that upon final hearing, the Court enter judgment in favor of Plaintiff against Defendants, jointly and severally, in an amount in excess of the minimum jurisdictional limits of this Court, for:

1. Injunctive relief;
2. Actual damages;
3. Compensatory damages;
4. Resulting damages;
5. Mental anguish damages;
6. Exemplary damages;
7. An order enjoining the defendants from similar conduct in the future;
8. Reasonable and necessary attorney's fees;

9. Costs of court; and

10. Pre and post judgment interest at the highest rate allowed by law, and for such other and further relief, general or special, at law or in equity, to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

/S/ Susan C. Norman
Susan C. Norman
Texas Bar No. 15083020
Law Offices of Susan C. Norman
P.O. Box 52518
Houston, Texas 7052
(713) 882-2066 Voice
(281) 402-3682 Facsimile
SueNorman@SueNormanLaw.com
Attorney for Sherry Johnston

Certificate of Service

I hereby certify that a true copy of the foregoing Amended Complaint was served on all attorneys of record via the Court's ECF system.

/S/ Susan C. Norman
_____
Susan C. Norman

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, Willie Jo Mills, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care; I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible.

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care; I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to

die as gently as possible.

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If the person named as agent in my Medical Power of Attorney is not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

My residence address is 3219 Birch Park Ln, Houston, Harris County, Texas 77073.

SIGNED on October 17, 2007.

Willie Jo Mills, Declarant

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness

Witness

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

(1) that may be treated, but is never cured or eliminated;

(2) that leaves a person unable to care for or make decisions for the person's own self; and

(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

STATE OF TEXAS §
§

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Willie Jo Mills, JoAnne Musick and Vivian Musick, known to me to be the Declarant and Witnesses whose names are subscribed to the foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the Declarant, Willie Jo Mills, declared to me and to the said Witnesses in my presence that said instrument is her Directive to Physicians and Family or Surrogates, and that she had willingly and voluntarily made and executed it as her free act and deed for the purposes therein expressed.

Willie Jo Mills
Willie Jo Mills, Declarant

JoAnne Musick
Witness

Vivian Musick
Witness

SUBSCRIBED AND ACKNOWLEDGED BEFORE ME by the said Declarant, Willie Jo Mills, and by the said Witnesses, JoAnne Musick and Vivian Musick, on this the 17 day of October, 2007.

VICKI SHAY BYERS
Notary Public, State of Texas
My Commission Expires
October 11, 2009

Vicki Shay Byers
Notary Public, State of Texas

PREPARED IN THE OFFICE OF:

Musick & Musick, LLP
397 N. Sam Houston Parkway E. Suite 325
Houston, TX 77060

A	
REPORT	

057921

PROBATE COURT 4

NO. 380,624

IN THE GUARDIANSHIP OF Willie Jo Mills, AN INCAPACITATED PERSON

IN THE PROBATE COURT NUMBER FOUR OF HARRIS COUNTY, TEXAS

FILED
2008 JUN 19 PM 1:45

COURT INVESTIGATOR REPORT
PURSUANT TO §648A OF THE TEXAS PROBATE CODE

Ray Sullins, Court Investigator in the above cause makes the following report to the Court;

VISITATION/PERSONAL DATA

Date Visited: 6-12-08

Location: Park Manor Nursing Home
19424 McKay St. Humble, Tx 77338

Phone: 281-319-4060

Date of Birth/Age: 11-27-1927

Marital Status : S M D (W)

MENTAL AND PHYSICAL CONDITION

Is there a Doctor's Letter: ✓ Yes ____ No Dated: 5-16-08

Source of Referral: ~~DRS~~ Application

Doctor's Name : Joseph B. Guerinni

Social Worker: Cynthia Miller Jones 281-319-4060

Date of Exam: 3-21-08

Diagnosis:

MENTAL: ~~Late~~ Depression/Confusion unable to make decisions

PHYSICAL: Late Effect of CVA (Stroke)/Cerebrovascular Disease Hypertension/ (DR's Letter states Ward is only Partially Incapacitated.)

Copy

ESTATE INFORMATION

Is there a power of attorney? ✓ Yes _____ No

If yes, what type? Durable + Medical Powers of Attorney

Who holds the power of attorney? Larry M. Mills

Is the proposed ward indigent? _____ Yes ✓ No

Is this a VA guardianship? _____ Yes ✓ No

GUARDIANSHIP

Proposed ward's understanding of the concept of guardianship
✓ Good _____ Fair _____ Poor _____ Unable to determine

Proposed ward's attitude toward guardianship:
✓ Consenting _____ Opposed _____ Unable to determine

Proposed ward's view of the necessity of guardianship:
✓ Consenting _____ Opposed _____ Unable to determine

Proposed ward's preference of guardian: Sherry Johnston
✓ Consenting _____ Opposed _____ Unable to determine

Has a directive to physician been executed: ✓ Yes _____ No

Proposed ward's view on directive to physician:
✓ Yes, want all measures taken

_____ No, does not want life support

✓ Unable to determine

RECOMMENDATION OF INVESTIGATOR

Is there a necessity for guardianship: ✓ yes _____ no

Temporary Guardianship: _____ yes ✓ no

_____ person _____ estate _____ both

Exhibit

Justification: _____

_____

_____

Permanent Guardianship: ✓ yes _____ no

✓ person _____ estate _____ both

Justification: _____

_____

_____

Family member or friend of Proposed Ward:

Name and address: LARRY MILLS (SON)
3103 BIRCH PARK LN
HOUSTON, TX 77073

Phone: Home: 281-821-5326 Cell: 832-435-1559

Would they like to be considered for guardian: YES

Should this case be referred to HCGP? _____ yes ✓ no

Narrative remarks: THERE IS ALSO ANOTHER P.O.A. (DURABLE P.O.A. FOR FINANCES NAMING Cindy Sue Pierce ① and SHERRY LYNN JOHNSTON ② AGENTS) THIS IS DATE 2-28-08, BUT THE SIGNATURE IS NOT LEGIBLE, ON ANY OF MY COPIES.

Respectfully submitted,

Date: 6-12-08

Ray Sullins
Court Investigator

Invreport.2/28/08

RECORDER'S MEMORANDUM:
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954-52-1383

Not Official

PROBATE COURT 4

069127

NO. 380,624

IN RE: GUARDIANSHIP OF	§	IN PROBATE COURT NO. 4
	§	
WILLIE JO MILLS,	§	OF
	§	
INCAPACITATED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING ATTORNEY AD LITEM

On this day come on for consideration the Motion of Larry Mills, Sr., for the appointment of an Attorney Ad Litem pursuant to the provisions of Section 646 of the Texas Probate Code. The Court is of the opinion that the Motion should be granted. It is, therefore,

ORDERED that Howard Reiner 713-963-8004, an attorney duly licensed to practice in the State of Texas and before this Court be, and hereby is, appointed to represent the interests of Willie Jo Mills, in the pending Application for Guardianship.

SIGNED on this, the 1 day of JULY, 2008.

JUDGE PRESIDING

APPROVED AS TO FORM:

OSTROM/Sain, LLP

BY: _____

JASON B. OSTROM
(TBA #24027710)
NICOLE K. SAIN
(TBA #24043901)
3100 Weslayan, Suite 360
Houston, Texas 77027
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Movant

FILED
08 JUL -3 PM 12:12
COUNTY CLERK
HARRIS COUNTY, TEXAS

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NO. 380,624

GUARDIANSHIP OF	§	IN THE PROBATE COURT
	§	
WILLIE JO MILLS,	§	NUMBER FOUR (4) OF
	§	
AN INCAPACITATED PERSON	§	HARRIS COUNTY, TEXAS

ORDER TO APPOINT GUARDIAN AD LITEM

On this day, the Court finds it necessary to appoint a Guardian Ad Litem to represent the interest of the alleged incapacitated person in this guardianship proceeding pursuant to §645 of the Texas Probate Code.

IT IS THEREFORE ORDERED that DAVID DEXEL is appointed Guardian Ad Litem to the alleged incapacitated person in this guardianship proceeding to protect the PROPOSED WARD in a manner that will enable the Court to determine what action will be in the best interest of the PROPOSED WARD and to report to the Court concerning the PROPOSED WARD and to take such action as is legally necessary to protect the best interest of the PROPOSED WARD and report to the Court.

IT IS FURTHER ORDERED that the Guardian Ad Litem is to be considered an officer of this Court and, pursuant to HIPAA Regulations 45 CFR 164.512 (e)(1()(i), that the Health Care Organization or Physician presented with this Order shall give the Guardian Ad Litem complete access to PROPOSED WARD'S Protected Health Information including, but not limited to, medical records, psychological records and intellectual testing records that are dated within the last 12 months from the date of this Order and up to and including Protected Health Information to the present date this Order is presented.

IT IS FURTHER ORDERED that the above appointed Guardian Ad Litem shall be given complete access to PROPOSED WARD'S financial records including, but not limited to, records of all bank accounts, investment accounts, retirement and employee benefit accounts, and credit and debt records.

SIGNED this 7th day of October, 2008.

JUDGE PRESIDING

SEND CONFORMED COPY TO:

HOWARD M. REINER
HOWARD M. REINER & ASSOCIATES
3410 Mercer Street
Houston, Texas 77027

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

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PROBATE COURT 4

NO. 380,624

144743

THE TEMPORARY GUARDIANSHIP PENDING CONTEST OF: WILLIE JO MILLS, AN INCAPACITATED PERSON	§ § § § §	IN THE PROBATE COURT NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY GUARDIAN OF THE PERSON AND ESTATE PENDING CONTEST

On this day came on to be considered the Application for Guardianship having been filed by LARRY MILLS, SR., and a General Denial filed by HOWARD M. REINER Contesting the Appointment of a Permanent Guardianship of the Person and Estate of **WILLIE JO MILLS**, an Incapacitated Person, and the Court after due consideration, finds that there is just cause for the Court on its own motion to appoint a Temporary Guardian Pending Contest to protect the proposed Ward's Person and Estate pursuant to §875(k) of the Texas Probate Code; that this Court has venue pursuant to §611 of the Texas Probate Code since the Proposed Ward resides in Houston, Harris County, Texas; that this Court has jurisdiction of these proceedings and subject matter of all persons of whom the law requires jurisdiction be had; that DAVID R. DEXEL, is eligible to act as Temporary Guardian Pending Contest of the Person and Estate of the Proposed Ward and is entitled to the appointment; and that Proposed Ward's rights and property will be protected by the appointment of a Temporary Guardian of the Person and Estate Pending Contest.

It is THEREFORE ORDERED, that DAVID R. DEXEL, is appointed Temporary Guardian Pending Contest of the Person and Estate of WILLIE JO

MILLS; that the Clerk shall this Order appointing DAVID R. DEXEL as Temporary Guardian Pending Contest to a certificate showing compliance upon the taking of the Oath and posting a bond in the amount of $ 500,000.00 in accordance with the requirement of law.

It is FURTHER ORDERED, that the Temporary Guardian Pending Contest shall have the following powers:

1. The power and authority to take possession and control of all of WILLIE JO MILLS' (i) business and personal records, (ii) financial statements, (iii) tax returns, (iv) copies of her wills, (v) copies of all trusts created by her, and all records and tax returns related thereto, (vi) copies of all trusts (and all records and tax returns related thereto) of which she is a current or contingent beneficiary, (vii) copies of all trusts (and all records and tax returns related thereto) of which she is trustee; (viii) all insurance policies insuring her or any of her property, (ix) medical and health records pertaining to WILLIE JO MILLS, and (x) collect and review all records wherever located;

2. The power and authority to take possession and control of all real and personal property owned by the Ward or in which the Ward has an interest, including without limitation (i) all cash on hand or on deposit in any bank or trust company, (ii) all securities of any kind including all bonds, debentures, and all common or preferred stock in corporations, (iii) all interests in partnerships, joint ventures and other business entities, (iv) personal property including motor vehicles, and (v) all real property including without limitation the Ward's personal residence;

3. The power and authority to establish one or more guardianship bank accounts necessary to carry on the Ward's personal, business and financial affairs and to provide for the Ward's personal living expenses;

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4. The power and authority to apply for and/or collect all amounts payable to, or owed to, WILLIE JO MILLS, including all debts, rentals, interest, dividends, royalties, or claims, and including all funds owed or received pursuant to WILLIE JO MILLS' claim for Social Security disability benefits, and to act to enforce and receive payment of that claim immediately, and to deposit funds from such amounts into guardianship accounts;

5. The power and authority to disburse funds from the guardianship bank account (or accounts) as needed for the Ward's reasonable living expenses and necessary doctor, hospital, and other medical expenses, subject to further orders of this Court;

6. The power and authority to insure the estate against liability, fire, theft, and other hazards in appropriate cases, subject to further orders of this Court;

7. The power and authority to take possession of the property of WILLIE JO MILLS held or owned in common as part owner with any other person or entity;

8. The power and authority to sign, on WILLIE JO MILLS' behalf, any other instrument in writing as necessary in the exercise of the powers herein granted;

9. The power and authority to apply for, arrange, and consent to any and all psychological, psychiatric, and medical tests, evaluations, and treatment, including surgery, as reasonably required, including disclosure of WILLIE JO MILLS' records;

10. The power and authority to make medical decisions and engage the services of medical providers and nurses, including eye and dental care providers, for the care and benefit of WILLIE JO MILLS, as allowed by the Texas Probate Code;

11. To provide food, clothing, and shelter for WILLIE JO MILLS, including arranging for care of WILLIE JO MILLS in an appropriate health care facility, including, but not limited to retaining sitters;

12. Power and authority to allow, facilitate and schedule custody and visitation involving WILLIE JO MILLS and the right and power to impose such a custody and visitation schedule in her best judgment;

13. Power and authority to possess, manage and control all properties of the Ward including, but not limited to benefits, financial accounts and real property. The power to restyle all assets from financial and bank institutions;

14. Power and authority to contract for or obligate the Ward only in a manner which is reasonably necessary to manage the business and personal affairs of the Ward and to provide for the Ward's needs;

15. Power and authority to perform all necessary acts to maintain the Ward in a manner to which the Ward is accustomed and to protect the assets of the Estate;

16. Power and authority to secure insurance and file federal income tax returns on the Ward's behalf;

17. Power and authority to receive and receipt for sums payable to the Ward from whatever source, including monthly Veteran's Benefits, Social Security and disability benefits, to negotiate checks, drafts and other instruments and administer the proceeds in conformity with orders of this Court; and

It is FURTHER ORDERED, that all Powers of Attorney are suspended until further Order of this Court.

It is FURTHER ORDERED, that the Temporary Guardianship Pending Contest shall remain in effect until further Order of this Court.

SIGNED this 9 day of October, 2008.

JUDGE PRESIDING

FILED
08 OCT -9 PM 12:25
COUNTY CLERK
HARRIS COUNTY, TEXAS

DAVID R. DEXEL, TBA #05671800
P.O. Box 66790
Houston, Texas 77266
TELEPHONE: (713) 527-9377
TELECOPIER: (713) 527-9379
Guardian Ad Litem

OFFICE OF BEVERLY B. KAUFMAN COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

IN MATTERS OF PROBATE	{	
	{	DOCKET NO. **380,624**
PROBATE COURT NO. **4**	{	
	{	STYLE OF
HARRIS COUNTY, TEXAS	{	DOCKET: **WILLIE JO MILLS** INCAPACITATED

CERTIFICATE OF APPOINTMENT

ON **OCTOBER 9, 2008 DAVID R. DEXEL** WAS APPOINTED **TEMPORARY GUARDIAN OF THE PERSON AND ESTATE PENDING CONTEST OF WILLIE JO MILLS,** INCAPACITATED. THE GUARDIAN QUALIFIED ACCORDING TO LAW ON **OCTOBER 9, 2008.**

GIVEN UNDER MY HAND AND SEAL OF COURT, AT HOUSTON, TEXAS ON **OCTOBER 9, 2008.**

(SEAL)

BEVERLY B. KAUFMAN, CLERK
PROBATE COURT NO. 4
HARRIS COUNTY, TEXAS

EVONY Y. SIMON
DEPUTY COUNTY CLERK

NO. CK 10668/EYS

RECORDER'S MEMORANDUM:
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PROBATE COURT #4

NO. 380,624

IN RE: GUARDIANSHIP OF	§	IN PROBATE COURT NO. 4
	§	
WILLIE JO MILLS,	§	OF
	§	
INCAPACITATED	§	HARRIS COUNTY, TEXAS

FINAL SETTLEMENT AGREEMENT

THIS FINAL SETTLEMENT AGREEMENT ("this Agreement") is made and entered into by and among the Parties as defined in this Agreement.

ARTICLE I: DEFINITIONS

1.1 The Parties to this Agreement are defined as follows:

a. The term "Cindy Sue Pierce" shall refer to Cindy Sue Pierce in her individual capacity and purported capacity as Attorney-In-Fact for Willie Jo Mills.

b. The term "Sherry Lynn Johnston" shall refer to Sherry Lynn Johnston in her individual capacity and purported capacity as Attorney-In-Fact for Willie Jo Mills.

c. The term "Larry Mills, Sr." shall refer to Larry Mills, Sr.

d. The term "Howard M. Reiner" shall refer to Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills.

e. The term "David R. Dexel" shall refer to David R. Dexel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills.

WILLIE JO MILLS IS NOT a party to the purported settlement of claims involving her

1.2 The terms "Affiliate" or "Affiliates" shall include such person's employees, assigns, trustees, agents, and heirs, as may be applicable.

1.3 The term "Agreement" shall refer to this Agreement, including all Exhibits attached hereto.

1.4 The term "Final Judgment" shall refer to the proposed Final Judgment to be entered in the Guardianship Lawsuit, a copy of which is attached as Exhibit A and incorporated by this reference.

1.5 The term "Guardianship Lawsuit" shall refer to the lawsuit pending under Cause Number 380,624; *In Re Guardianship of Willie Jo Mills*; In the Probate Court Number Four (4) of Harris County, Texas, including all petitions, answers and cross/counter claims.

1.6 The term "Claims" shall refer to and include any and all claims, causes of action, debts,

demands, actions, costs, expenses, losses, damages, charges, challenges, contests, liabilities, promises and agreements relating to the claims asserted or that could have been asserted by any Party in the Guardianship Lawsuit or otherwise as of the Effective Date, save and except warranties and representations under this Agreement.

1.7 The term "Court" shall refer to the Probate Court Number Four (4) of Harris County, Texas, having jurisdiction of and presiding over the Power of Attorney Lawsuit.

1.8 The term "Willie Jo Mills" shall refer to Willie Jo Mills, Individually.

1.9 The term "Effective Date" shall refer to the date the last Party signs this Agreement.

1.10 The terms "the Parties" or "the Parties hereto" shall jointly refer to Cindy Sue Pierce, Sherry Lynn Johnston, Larry Mills, Sr., Howard M. Reiner, and David R. Dexel.

NOTE: Willie Jo NOT a party and neither Reiner nor Dexel signed on her behalf.

1.11 The term a "Party" shall refer to either of Cindy Sue Pierce, Sherry Lynn Johnston, Larry Mills, Sr., Howard M. Reiner, or David R. Dexel.

1.12 The terms "Successor" or "Successors" shall refer to the heirs, devisees, descendants, legatees, executors, agents, personal representatives, successor trustees, and any successors of a Successor or Successors.

1.13 The term "A.G. Edwards" shall refer to the A.G. Edwards Trust Company, a subsidiary of Wachovia Corporation and an affiliate of A.G. Edwards, a division of Wachovia ~~Securities, LLC~~ Bank N.A. AND ITS SUCCESSORS, AND/OR ASSIGNS

4.0 WRS SJ LMM CSP

ARTICLE II: RECITALS

WHEREAS, Willie Jo Mills executed a power of attorney on October 12, 2007, naming Larry Mills, Sr., as her agent-in-fact;

WHEREAS, Willie Jo Mills executed a Last Will and Testament on October 17, 2007;

WHEREAS, Willie Jo Mills suffered a stroke on or about October 28, 2007;

WHEREAS, Larry Mills, Sr., filed the Guardianship Lawsuit; May 29, 2008

WHEREAS, Howard M. Reiner was appointed Attorney Ad Litem for Willie Jo Mills; July 1, 2008

WHEREAS, David R. Dexel was appointed Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills;

WHEREAS, Willie Jo Mills has been found to be incapacitated by a physician;

Court Investigator's Report, as of June 12, 2008 states "Dr's letter states Ward is only partially incapacitated." Report states doctor's letter is dated 5-16-08 for examination 3-21-08

Not a Copy

WHEREAS Willie Jo Mills is not able to make decisions regarding her finances or care;

WHEREAS, certain differences, controversies, and Claims have arisen by and between the Parties as set forth in the Guardianship Lawsuit.

WHEREAS, the Parties have determined that it is in their respective best interests to settle and terminate all Claims between the Parties (and their Affiliates and Successors) relating to the Guardianship Lawsuit;

WHEREAS, this Agreement is made to completely settle and compromise all differences, controversies, and Claims between the Parties (and their Affiliates and Successors) relating to the Guardianship Lawsuit; and

WHEREAS, by executing this Agreement, no Party hereto concedes any legal or factual contentions of the other Party, but specifically denies same and enters into this Agreement solely to terminate and settle the Claims between themselves in an effort to minimize costs, expenses, attorneys' fees, and, most of all, to buy peace.

ARTICLE III: AGREEMENTS

For and in consideration of the premises, the mutual covenants and the terms hereunder, the sufficiency of which consideration is hereby mutually acknowledged, the Parties to this Agreement hereby agree as follows:

3.1 867 Management Trust. Each Party represents and agrees as follows:

a. A Management Trust will be created for the use and benefit of Willie Jo Mills pursuant to Texas Probate Code Section 867, and A.G. Edwards will be the sole Trustee of said Trust.

b. The 867 Management Trust will be funded with all assets owned by Willie Jo Mills. Any real property and/or personal property owned by Willie Jo Mills shall be sold by the Trustee of the 867 Management Trust, and the proceeds from such sale added to the corpus of the Trust.

3.2 Willie Jo Mills' Assets. Each Party represents and agrees as follows:

a. Such Party is not aware of any account owned by Willie Jo Mills or in which Willie Jo Mills has assets other than the following:

i. Humble Community Bank Account xxx7736
ii. Prosperity Bank CD xxx1284
iii. Wachovia Bank CD xxx4952
iv. Wells Fargo Bank CD xxx9771
v. Sterling Bank CD xxx3444

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COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT

vi. Compass Bank CD xxx4815
vii. Washington Mutual IRA xxx9510
viii. Washington Mutual CD xxx1613
ix. First National Bank CD
x. Prosperity Bank Account 31-6482-9
xi. Royalty payments FN 1
xii. Assets in the Guardianship Estate Accounts

3.3 Willie Jo Mills' Estate. Cindy Sue Pierce and Sherry Lynn Johnston represent to Larry Mills as follows:

a. They are not aware of any properties, real or personal, probate or non-probate, in which Willie Jo Mills has a interest as of the Effective Date of this Agreement, other than the assets listed on Exhibit B attached to this agreement;

b. They have not received any property from Willie Jo Mills since October 28, 2007; and

c. They have disclosed all of Willie Jo Mills' known assets, real and personal, to Larry Mills, Sr.

3.4 Willie Jo Mills' Estate. Larry Mills, Sr., represents to Cindy Sue Pierce and Sherry Lynn Johnston as follows:

a. He is not aware of any properties, real or personal, probate or non-probate, in which Willie Jo Mills has a interest as of the Effective Date of this Agreement, other than the assets listed on Exhibit B attached to this agreement;

b. He has not received any property from Willie Jo Mills since October 28, 2007; and

c. He has disclosed all of Willie Jo Mills' known assets, real and personal, to Cindy Sue Pierce and Sherry Lynn Johnston.

3.5 Guardian of the Person of Willie Jo Mills. Each Party represents and agrees as follows:

a. David R. Dexel shall serve as Guardian of the Person for Willie Jo Mills.

b. David R. Dexel shall be released and discharged as Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills.

c. Howard M. Reiner shall be released and discharged as Attorney Ad Litem for Willie Jo Mills.

d. The Permanent Guardian of the Person shall have all rights and abilities bestowed upon Guardians by the Texas Probate Code, and shall also be required to make

FN 1 - See attached handwritten addendum

SUBJECT TO PROTECTIVE ORDER

information concerning Willie Jo Mills' health and medical conditions and whereabouts readily available to the Parties.

3.6 Willie Jo Mills' Testamentary Instruments. Each Party represents and agrees as follows:

a. Such Party is not aware of any testamentary instruments executed by the Decedent, or alleged to have been executed by Decedent, other than the Last Will and Testament dated October 17, 2007.

3.7 Distribution of Willie Jo Mills' Assets At Death. The Parties agree that all of Willie Jo Mills' Estate shall be distributed upon her death as follows:

a. All assets owned by Willie Jo Mills, wherever situated or however styled or held, shall be distributed equally to and between Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce, subject to the payment of reasonable and necessary administration expenses and outstanding debts incurred by Willie Jo Mills or her Guardian.

b. Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce each hereby disclaims any interest, current or future, that he or she may have in any of Willie Jo Mills' Assets, real or personal, probate or non-probate, except those he or she is to receive under Paragraph 3.7(a) of this Agreement.

c. Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce each agrees that none of them, directly or indirectly, individually or through an agent, shall seek to probate a will of Willie Jo Mills other than the October 17, 2007 Will, in an effort to avoid the equal distribution described in Paragraph 3.7(a) of this Agreement.

3.8 Settlement of Lawsuit.

a. Entry of Final Judgments. The Parties shall cooperate in jointly seeking the entry by the Court of the Final Judgment attached as Exhibit A, incorporated by this reference. If the Court declines to enter the Final Judgment, this Agreement shall be null and void.

3.9 Releases.

a. The Parties hereby forever release and discharge each other, and each of their Successors and Affiliates of and from any and all Claims.

b. The Parties hereby forever release and discharge David R. Dexel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills and all his agents and employees of and from any and all possible claims, demands, damages, costs and expenses of any kind whatsoever and causes of action(s), known or unknown, taken or not taken by him in collecting, preserving, or administering the

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Guardianship Estate of Willie Jo Mills, whether past or present or in the future, and from any and all searches and non-searches for assets of any kind of Willie Jo Mills, whether reported or unreported, collected or uncollected, traced or not traced, investigated or not investigated, known or lost, and any and all other claims the parties may have against David R. Dexel.

The Parties further acknowledge and agree that upon execution of this agreement by all parties, the Court's approval of this agreement, and the Court's approval of the final account by David R. Dexel as Temporary Guardian Pending Contest of the Estate: (i) any fiduciary duties and obligations of David R. Dexel shall be completely and fully performed and extinguished; (ii) to the extent any fiduciary duty might still remain, Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. specifically release David R. Dexel; (iii) to the extent David R. Dexel ever owed a fiduciary duty to Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr., Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. hereby specifically release David R. Dexel and his successors, from any and all obligations relating to such duty. Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. hereby agree that they shall have no further right or standing to request or demand information of any type regarding the assets of Willie Jo Mills from David R. Dexel after the Court approves David R. Dexel's final account.

c. The Parties hereby forever release and discharge Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills, for and with respect to any action taken or not taken by him while serving as Attorney Ad Litem for Willie Jo Mills.

3.10 Representations And Warranties.

a. Each Party hereby stipulates, represents and warrants to the other Party, as follows:

i) That he or she is the current legal and beneficial owner of all of the Claims released hereby, as well as the Claims asserted by him or her orally or in written form with respect to any litigation he or she could have brought with respect to matters covered by this Agreement;

ii) That he or she has not assigned, pledged or contracted to assign or pledge to any other person or entity any interest he or she may have in the Power of Attorney Lawsuit, or the Claims;

iii) That the terms and provisions of this Agreement are valid, binding and enforceable as against himself or herself, any such Party's Successors and Affiliates;

iv) That he or she is adequately represented by competent counsel of his or her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto;

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v) That he or she is not under any form of legal disability or incapacity at the time he or she executes this Agreement;

vi) That Nicholas Westbrook and the Westbrook Firm, P.C., solely represent Cindy Sue Pierce and Sherry Lynn Johnston and do not and have never represented David R. Dexel, Howard M. Reiner or Larry Mills, Sr., and have not provided David R. Dexel, Howard M. Reiner or Larry Mills, Sr., legal advice or services, or made any representation to David R. Dexel, Howard M. Reiner or Larry Mills, Sr., or his counsel;

vii) That Jason Ostrom and the law firm of OSTROM/Sain, solely represent Larry Mills, Sr., and do not and have never represented Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Howard M. Reiner, and have not provided Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel, or Howard Reiner legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Howard M. Reiner;

viii) That the law firm of Howard M. Reiner & Associates solely represents Howard M. Reiner, and does not and has never represented Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr., and has not provided Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr., legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr.;

ix) That the law firm of David R. Dexel solely represents David R. Dexel, and does not and has never represented Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner or Larry Mills, Sr., and has not provided Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner, or Larry Mills, Sr., legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner or Larry Mills, Sr.;

x) That in executing this Agreement, each Party has relied upon his or her own judgment and the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party, or by such Party's Affiliates;

xi) That the consent of such Party to this Agreement was not procured, obtained or induced by improper conduct, undue influence or duress;

xii) That he or she is not in a significantly disparate bargaining position with regard to any other Party.

b. Each Party understands and agrees that the other Party has relied upon these representations and warranties made in this Agreement when in entering into this Agreement.

3.11 Miscellaneous Provisions.

a. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Affiliates and Successors.

b. Party's Attorney's Fees and Expenses Incurred to Date. Each Party hereby agrees that each Party's respective attorney's fees, costs, and expenses relating to the Guardianship Lawsuit, through the date of this Agreement, including all attorney's fees, costs, and expenses necessary and/or incurred in the effectuation of this Agreement, shall be submitted to Harris County Probate Court Number Four for adjudication by that Court.

c. Attorney's Fees and Expenses for Breach of Agreement. The Parties agree that if it becomes necessary to assert any claim to enforce or defend the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and other related litigation expenses from the non-prevailing Party.

d. Construction. The Parties acknowledge and agree that both Parties have participated in the drafting of this Agreement and one Party shall be considered the drafter of this Agreement and, therefore, no presumptions shall be made for or against one Party on the basis that such Party was the drafter of this Agreement.

e. No Oral Modification. No amendment, modification, waiver, or consent with respect to, any provision of any of this Agreement shall be effective unless the same shall be in writing and signed by the Party or Parties hereto against whom enforcement of the amendment, modification, waiver or consent is sought.

f. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. This Agreement shall only be binding when one or more counterparts hereof, individually or taken together, shall bear all signatures of the Parties hereto reflected hereon as signatories.

g. Choice of Law. This Agreement shall be governed pursuant to the laws of the State of Texas.

h. Choice of Venue. Harris County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement.

i. Assignment. This Agreement and the rights and obligations of the Parties hereto

Adversary

shall not be assigned or delegated by any Party hereto without the prior written consent of the other Parties hereof.

j. Incorporation. All Exhibits attached hereto are hereby incorporated by reference in this Agreement for the purposes set forth above.

k. Headings. The paragraph headings and sub-headings used herein are for descriptive purposes only. The headings have no substantive meaning and the terms of this Agreement shall not be affected by such headings.

PARTIES:

Larry Mills, Sr.

Cindy Sue Pierce

Sherry Lynn Johnston

Howard M. Reiner

David R. Dexel

AGS CONFIDENTIAL

36 3—41—0834

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Larry Mills, Sr.,, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2009.

_____
Notary Public, State of Texas

My Commission Expires:

_____

Notary's Printed Name:

UNOFFICIAL COPY

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Cindy Sue Pierce, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2009.

_____
Notary Public, State of Texas
Notary's Printed Name:

My Commission Expires:

_____

UNOFFICIAL COPY

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally Sherry Lynn Johnston , in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2009.

_____
Notary Public, State of Texas

My Commission Expires:

_____

Notary's Printed Name:

UNOFFICIAL COPY

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2009.

_____
Notary Public, State of Texas

My Commission Expires:

_____

Notary's Printed Name:

EXHIBIT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared David R. Dexel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2009.

_____
Notary Public, State of Texas

My Commission Expires:

_____

Notary's Printed Name:

EXHIBIT G
DEXEL - MILLS - 154
INJECTION

Adendum

FN' - Sherry Lynn Johnston warrants and represents that during the lifetime of Willie Jo Mills and Morgan Mills, Jr., she conveyed her undivided 1/3 mineral interest in the "Buffalo Land" back to her parents Willie Jo Mills and Morgan Mills, Jr., and she is unaware of that undivided 1/3 mineral interest in the "Buffalo Land" being conveyed back to her. The Parties agree that if the real property records in Freestone County as of the date of this agreement reflect this conveyance, David Dexel as Temporary Guardian shall convey by Special Warranty Deed Sherry Lynn Johnston's undivided 1/3 mineral interest in the "Buffalo Land" back to her. David Dexel as Temporary Guardian shall reserve a life estate in this conveyance in favor of Willie Jo Mills.

Add Exhibit

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

387754

PROBATE COURT #4

NO. 380,624

THE TEMPORARY GUARDIANSHIP PENDING CONTEST OF: WILLIE JO MILLS, AN INCAPACITATED PERSON	§	IN THE PROBATE COURT NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

Order Appointing Guardian of the Person

On this day, the Court heard the application of LARRY MILLS, SR., for letters of guardianship of the person of WILLIE JO MILLS, an incapacitated person, under the authority of Sections §682 and §693 of the Texas Probate Code. After hearing all evidence and testimony of witnesses in support of the application, the Court finds by clear and convincing evidence the following:

That DAVID R. DEXEL was appointed Temporary Guardian Pending Contest of the Person and Estate;

That this Court on or about December 3, 2008, signed an Order Creating a Management Trust for the Benefit of WILLIE JO MILLS under Section 867 of the Texas Probate Code;

That the Court Investigator filed a Court Investigation Report Pursuant to §648A of the Texas Probate Code, signed on or about June 22, 2009, reporting the Ward's view on Directive to Physicians as "No, does not want life support."

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That the Adult Children (Larry Mills, Sr., Cindy Pierce and Sherry Johnston) of WILLIE JO MILLS are in agreement that DAVID R. DEXEL be appointed Guardian of the Person of WILLIE JO MILLS with full authority as given in the Texas Probate Code, and the laws of Texas, including the authority to execute Do not Resuscitate Documents including Out of Hospital Do Not Resuscitate documents (DNR);

That Ward is an incapacitated person and it is in the best interests of Ward to have a guardian of the person appointed by this Court. The rights of Ward will be protected by the appointment of a guardian.

The Court further finds by a preponderance of evidence the following:

Due notice of the application has been given as required by law, and citation has been personally served on Ward in accordance with law. Ward did not appear in person and the Court finds that it was not necessary for Ward to appear in person. Ward also appeared by and through her Attorney Ad Litem, Howard M. Reiner.

Ward is an adult female, 81 years old. Ward is mentally incapable to care for herself. Ward has no permanent legal guardian of her person. This Court has venue because Ward resides in Harris County, Texas. DAVID R. DEXEL is eligible and a proper person to be appointed as guardian and is entitled to be appointed; and that there is no necessity for the appointment of appraisers.

This Court has jurisdiction of this cause; evidence has been presented regarding the incapacity of Ward and the rights of Ward's person will be protected by the appointment.

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IT IS ORDERED that the Court finds that WILLIE JO MILLS is totally incapacitated and totally incapable of maintaining her person. Evidence of this total incapacity was provided by medical and other evidence; that WILLIE JO MILLS does not have the capacity to operate a motor vehicle and to vote in a public election; and that DAVID R. DEXEL is granted the full powers under the Probate Code, including the full authority to execute Do not Resuscitate Documents including Out of Hospital Do Not Resuscitate (DNR) documents.

IT IS FURTHER ORDERED that DAVID R. DEXEL is appointed guardian of the person of WILLIE JO MILLS, an incapacitated person, and that the clerk of this Court issue letters of guardianship when he has qualified according to law.

IT IS FURTHER ORDERED that the guardian's bond is hereby fixed in the amount of $ 100.00 CASH .

It is FURTHER ORDERED, that the term of this guardianship shall be until the Ward is restored to full legal capacity, dies, or until the Court determines this matter shall be terminated;

IT IS FURTHER ORDERED that there is no necessity for an appraisal of Ward's estate.

IT IS FURTHER ORDERED that the Court finds that Applicant has brought this application in good faith and with just cause for the purpose of having a guardian appointed.

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96-41-0620

SIGNED on July 22, 2009.

JUDGE PRESIDING

THIS ORDER IS EVIDENCE OF THE AUTHORITY GRANTED TO THE GUARDIAN AND OF THE SCOPE OF THE POWERS AND DUTIES THAT THE GUARDIAN MAY EXERCISE ONLY AFTER THE DATE LETTERS OF GUARDIANSHIP HAVE BEEN ISSUED BY THE CLERK.

FILED
2009 JUL 22 PM 4:18

Approved as to Content and Form:

DAVID R. DEXEL, TBA #05671800
P.O. Box 66790
Houston, Texas 77266
Telephone: (713) 527-9377
Facsimile: (713) 527-9379
TEMPORARY GUARDIAN
PENDING CONTEST

HOWARD M. REINER, TBA 16754780
3410 Mercer Street
Houston, Texas 77027
TELEPHONE: (713) 963-8004
FACSIMILE: (713) 963-8044
ATTORNEY AD LITEM

JASON OSTROM, TBA #24027710
OSTROM/SAIN
3100 Weslayan, Suite 360
Houston, Texas 77027
TELEPHONE: (713) 863-8891
FACSIMILE: (713) 863-1051
ATTORNEY FOR LARRY MILLS

NICHOLAS R. WESTBROOK,
TBA 24042141
3730 Kirby Drive, Suite 1200
Houston, Texas 77098
TELEPHONE: (713) 834-1194
FACSIMILE: (713) 869-3017
ATTORNEY FOR CINDY PIERCE
AND SHERRY JOHNSTON

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LARRY MILLS, Sr.

SHERRY JOHNSTON

CINDY PIERCE

56-1-41-5622

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FILED
In the Office of the
Secretary of State of Texas
MAR 01 2013
Corporations Section

CERTIFICATE OF FORMATION

OF

GSL CARE MANAGEMENT, LLC
(A Limited Liability Company)

ARTICLE ONE

The name of the filing entity being formed is GSL Care Management, LLC (the "Company").

ARTICLE TWO

The filing entity being formed is a limited liability company.

ARTICLE THREE

The purpose for which the Company is formed is any lawful purpose for which a limited liability company may be formed under the Texas Business Organizations Code.

ARTICLE FOUR

The street address of the Company's initial Registered Office, and the name of its initial Registered Agent at that office, are as follows:

Ginger S. Lott
9935 Tulip Street
Conroe, Texas 77385

ARTICLE FIVE

The Company will have one or more Managers. The name and address of the initial Manager is:

Ginger S. Lott
9935 Tulip Street
Conroe, Texas 77385

ARTICLE SIX

The undersigned Organizer hereby disclaims any past or future interests in or control of GSL Care Management, LLC and resigns as the Organizer effective upon the formation of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, 2013.

Sharon M. Leal

Sharon M. Leal, Organizer
408 W. 17th Street, Suite 101
Austin, Texas 78701-1207
(512) 474-2002

DATA ENTRY
PICK UP THIS DATE

PROBATE COURT 4

Cause No. 380,624

In The Matter of the Guardianship of	§	IN THE PROBATE COURT
	§	
WILLIE JO MILLS,	§	No. FOUR (4) OF
	§	
An Incapacitated Person	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING GUARDIAN AD LITEM

On this day, came on for consideration the Motion to Appoint Guardian Ad Litem filed by DAVID R. DEXEL, Guardian of the Person of WILLIE JO MILLS, An Incapacitated Person, for the appointment of Guardian Ad Litem pursuant to the provisions of Tex. Prob. Code Ann. §645 (Vernon 1980 & Supp. 1997); and the Court being of the opinion that the Motion is well taken and should be granted; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that Clarinda Comstock, telephone number: 713-961-8011; fax number: 713 961-8032 be appointed Guardian Ad Litem pursuant to Tex. Prob. Code Ann. §645 (Vernon 1980 & Supp. 1997) to represent the interests of the Ward.

IT IS FURTHER ORDERED that pursuant to HIPAA Regulations 45 CFR § 164.512(e)(1)(i) (2002), that the Health Care Organization or Physician presented with this Order shall give the Guardian Ad Litem complete access to Ward's Protected Health Information including, but not limited to, medical records, psychological records and intellectual testing records that are dated within the last 12 months from the date of this Order and up to an including Protected Health Information to the present date of this Order is presented.

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06/21/2013 15:21:42 pg 2 of 2

IT IS FURTHER ORDERED that the above-appointed Guardian Ad Litem shall be given complete access to Ward's financial records including, but not limited to, records from all bank accounts, investment accounts, retirement and employee benefit accounts, and credit and debt records.

IT IS FURTHER ORDERED that the above-appointed Guardian Ad Litem shall be given access to the Ward with no other counsel present if the Guardian Ad Litem so chooses.

Signed this 17 day of June, 2013.

Christine Butts
JUDGE PRESIDING

DAVID R. DEXEL, TBN: 05671800
P.O. Box 66790
Houston, Texas 77266
TELEPHONE: (713) 527-9377
FACSIMILE: (713) 527-9379

FILED
2013 JUN 20 AM 9:32
Stan Stanart
HARRIS COUNTY DISTRICT CLERK

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PROBATE COURT 4

Cause No. 380,624

In The Matter of the Guardianship of	§	IN THE PROBATE COURT
	§	
WILLIE JO MILLS,	§	NUMBER FOUR (4) OF
	§	
An Incapacitated Person	§	HARRIS COUNTY, TEXAS

Application for Leave to Resign as Guardian of the Person and for Appointment of Successor Guardian of the Person

DAVID R. DEXEL, Guardian of the Person of **WILLIE JO MILLS**, an incapacitated person, files this Application for Leave to Resign as Guardian of the Person and requests the Court to appoint a Successor Guardian of the Person of Ward. In support, Applicant shows the following:

DAVID R. DEXEL was appointed Temporary Guardian Pending Contest of the Person and Estate of **WILLIE JO MILLS**, an incapacitated person, by Order of this Court and qualified as Temporary Guardian of the Person and Estate Pending Contest on October 8, 2008.

On December 1, 2008, this Court signed an Order Creating a Management Trust for the Benefit of the Ward Under Section §867 of the Texas Probate Code. DAVID R. DEXEL was appointed Permanent Guardian of the Person of **WILLIE JO MILLS** on July 27, 2009, and qualified.

Applicant needs to resign as Guardian of the Person and requests that the Court appoint a qualified Successor Guardian of the Person for the Ward.

Applicant is no longer able to serve as Guardian of the Person.

Ward is an adult female who is 85 years old, born November 27, 1927. Ward currently resides at the Silverado Senior Living Center, 22955 Eastex Freeway, Kingwood, Harris County, Texas 77339.

This Court has venue over these proceedings because the original guardianship was filed and created in this Court.

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The requested term of this guardianship is for such time as Ward's physical or medical condition necessitates the continuation of this guardianship.

The nature and degree of Ward's continuing incapacity is as follows:

Ward has just been evaluated by Dr. Stanley Fisher, who has determined that Ward continues to suffer from significant cognitive impairment in the range of severe dementia. A copy of his evaluation is attached as Exhibit "A."

Applicant prays that his resignation be accepted and that the Court appoint a qualified Successor Guardian of the Person of **WILLIE JO MILLS**, an incapacitated person, and for all further relief to which Applicant may be entitled.

Respectfully submitted,

DAVID R. DEXEL, TBN 05671800
P.O. Box 66790
Houston, Texas 77266
TELEPHONE: (713) 527-9377
TELECOPIER: (713) 527-9379
Guardian of the Person of: Willie Jo Mills

FILED
2013 AUG 30 PM 1:20
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

UNOFFICIAL COPY

E9108:3091:6102630

EXHIBIT "A"

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08302013 16:03:P0184

Methodist
Neurological Institute

Stanley Fisher, M.D.

6560 Fannin St., ST902
Houston, Texas 77030
Tel: (713) 441-3337
Fax: (713) 790-2004
sfisher@tmh.tmc.edu

MILLS, WILLIE
08/23/13

NEW PATIENT VISIT

Ms. Mills is an 85-year-old female with history of progressive cognitive decline complicated by stroke about seven years ago, history of atrial fibrillation, hypertension, and COPD, who has been a resident of Silverado for the last five years. She is brought to me because of question of her neurological status and her cognitive abilities. I have previously observed Ms. Mills in the Silverado Facility with activities of daily living and interactions, but this is my first official evaluation as her treating physician. According to the limited history that I have she has been declining for more than seven years. She spent five of those in Silverado and according to the caregivers who know her there was a slow decline in her function to the point that currently she is dependent for all ADLs, incontinent of urine and bowel and unable to communicate those needs, but still able to interact with caregivers, sometimes shows appropriate emotions, recognizes her children and visitors who come frequently and is able to have some short, but quality interactions with the staff. The stroke left her with right hemiparesis, but she does not have aphasia. She is not on any medications for her dementia and she also is not on any antiplatelet medications for unclear reason.

PAST MEDICAL HISTORY: As I mentioned includes stroke with residual right-sided weakness, COPD, A.fib, hypertension, osteoarthritis and dementia of unclear etiology.

MEDICATIONS: Includes escitalopram 10 mg, ferrous sulphate, hydralazine, tramadol as needed, multiple vitamins, and as needed pain medication.

SOCIAL HISTORY: She apparently has three children, two daughters and one son and she has a legal guardian. She apparently was a 40-pack year smoker in the past and now according to caregiver she does not ask her cigarettes, but her daughter gives her sometimes electronic cigarette without patient asking. The rest of the social and family history is not available to me.

PHYSICAL EXAMINATION: She is an elderly female, in a wheelchair. She is awake, appears to be alert. Her heart rate is 84 and regular. Blood pressure is 146/67. She stands 5 feet 4 inches tall and weighs 115 pounds, but does not appear to be cachectic. She has no carotid bruits. I am unable to do optic fundi evaluation. On the Mini-Mental State Examination, she scored 5/30. She was able to name objects and have some awareness of what City and State she was. She was also aware the year of her birth, but not her age. She thought that she is living at home with her daughter even though she lives in Silverado for the last five years.

Continued.....

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She thought that her husband is alive and she could not tell me how many daughters and sons she has, but she was able to follow some simple commands and answer some simple questions yes or no. She has right hemiparesis with limited movement in both upper and lower extremities. She has some severe arthritic changes in the left upper extremity with limited range of motion, ulnar deviation, and moderately severe apraxia in the left hand. She has about 4/5 weakness on the left side. She has no expressive or receptive aphasia. She has no dysarthria even though she has hoarse voice. She has hypersalivation when she speaks. Her pupils are equal and reactive to light. Her extraocular movement appears to be intact and there appears to be no problem with visual fields and exam however is limited due to cooperation. There seems to be no facial weakness or asymmetry. The sensory exam is limited because of her cooperation. The patient is unable to get up or ambulate. The patient is currently wheelchair bound and has a boot on her right foot because of fracture.

ASSESSMENT AND PLAN: This is an 85-year-old lady with reported history of cognitive and functional decline over at least a seven-year period, but history is sketchy and not completely available to me.

At this point, she clearly has significant cognitive impairment in the range of severe dementia. She does not have aphasia; therefore, the specific left hemispheric stroke is probably not completely responsible for her deterioration; however, I am unable at this time to give exact diagnosis.

I suspect she has a combination of Alzheimer's dementia and vascular dementia; however, without imaging and without a detailed history that is difficult to determine.

The patient is completely dependent on her ADLs; however still capable of certain interaction; therefore, I decided to initiate Exelon patch. Because of her vascular risk factors of hypertension, atrial fibrillation and others I decided to put her on enteric coated aspirin. She is not a candidate for anticoagulation because of significant cutaneous hematomas that she has even without medications. I strongly encouraged the staff not to allow her to smoke even electronic cigarettes because that can increase blood pressure and cause cardiovascular events, especially since patient does not ask for it. I believe that because of patient's cognitive status she should be taken care in a facility that is experienced in patients with cognitive impairment. She seems to be well cared currently while at Silverado. I encouraged the caregivers to continue to engage her, talk to her daily, interact with her, and encourage participating in low level functional events. The patient unfortunately is incontinent of bowel and bladder and unable to tell when she goes; therefore, I encouraged the caregivers to continue bowel and bladder protocol to maintain skin integrity.



Stanley Fisher, M.D.
Co-Director of Movement Disorders And Neurorehabilitation Center
Methodist Neurological Institute
Associate Professor of Neurology
Weill Medical College
Cornell University

SF/aqk/dsh 0046
DT: 08/24/13

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08/29/2013:1603:P0186

Methodist
Neurological Institute

DEPARTMENT OF NEUROLOGY
Stanley Fisher, M.D.
6560 Fannin, Suite 802 Houston, Texas 77030
Telephone: 713-441-3337 Fax: 713-790-2004

DPS # 70123771 DEA # BF7792060

Name: Willie Jo Wills Date 8/23/13

☐ Label
Refill 0 - 1 - 2 - 3 - 4 - PRN

ECASA 81 mg
Take 1 PO daily
Disp # 30 (thirty)

Fisher
Product Selection Permitted M.D.

M.D.
Dispense as Written

TMH951 (New 10/2005)

Methodist
Neurological Institute

DEPARTMENT OF NEUROLOGY
Stanley Fisher, M.D.
6560 Fannin, Suite 802 Houston, Texas 77030
Telephone: 713-441-3337 Fax: 713-790-2004

DPS # 70123771 DEA # BF7792060

Name: Willie Wills Date 8/23/13

☐ Label
Refill 0 - 1 - 2 - 3 - 4 - PRN

No smoking
(including electronic smoking)

Fisher
Product Selection Permitted M.D.

M.D.
Dispense as Written

TMH951 (New 10/2005)

Methodist
Neurological Institute

DEPARTMENT OF NEUROLOGY
Stanley Fisher, M.D.
6560 Fannin, Suite 802 Houston, Texas 77030
Telephone: 713-441-3337 Fax: 713-790-2004

DPS # 70123771 DEA # BF7792060

Name: Willie Jo Wills Date 8/23/13

☐ Label
Refill 0 - 1 - 2 - 3 - 4 - PRN

Evaluate pt for tob. D/C
Plavix 1 daily as prescribed
Disp # 30 (thirty)

Fisher
Product Selection Permitted M.D.

M.D.
Dispense as Written

TMH951 (New 10/2005)

ADOPTED

Case 4:16-cv-2915 Document 1-1 Filed in TXSD on 12/19/16 Page 7 of 15

T> 7391 PG> 350

EDULED DELIVERY> ALL MESSAGES

FROM> 8/23 8:11am TO> 8/25 5:34am

********** ACCOUNT: 7391 PAGE: 350 **********

>> MSG: 1274 IN> EVT Fri 8/23 4:00pm CDT OUT> GIN Fri 8/23 4:18pm CDT TO> -

***** EVENT - ACTION REQUIRED *****
For: If Dr Fisher is NOT o/c, ADD this to o/c info for the wknd
Message: EXCEPT: When NOT O/C on wknds--"Outside" hosp''s (HEALTH SOUTH, TTI, PARK MANOR, etc): relay to Dr Fisher directly on CEL,p/Evt

********** ACCOUNT: 7391 PAGE: 350 **********

>> MSG: 1275 IN> MAS Fri 8/23 10:16pm CDT

DR
FISHER
OPT To Which DR FISHER OFC o/c
changes @ 8a
Name SHERRY JOHNSTON\ DTR URG C/W TIL MON
PT--c/w til DOH (y/n) YES, CAN WAIT <-Required
Hosp + Sta
Tel NO dash to V [281-622-1771] CEL V Y
Pt name WILLIE JO MILLS\ [redacted] Do
NOT relay REFILLS
Ask Hosp-re: Estab pt or Consult? ESTABLISHED PT
Disc Anon Cl Blkr
Re: NEEDS TO DISCUSS PT CARE If
n/c i/15min, pls cb + say 2nd cl Clr

ID:713 394-6000

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Part of my exclusion criteria

Folstein Mini

Folstein Mini-Mental State Exam		
I. ORIENTATION (Ask the following questions; correct = ☑)	Record Each Answer:	(Maximum Score = 10)
What is today's date?	Date (eg, May 21)	1 ☒
What is today's year?	Year	1 ☒
What is the month?	Month	1 ☒
What day is today?	Day (eg, Monday)	1 ☒
Can you also tell me what season it is?	Season	1 ☒
Can you also tell me the name of this hospital/clinic?	Hospital/Clinic	1 ☒
What floor are we on?	Floor	1 ☒
What city are we in?	City	1 ☒
What county are we in?	County	1 ☒
What state are we in?	State	1 ☒
II. IMMEDIATE RECALL	(correct = ☑)	(Maximum Score = 3)
Ask the subject if you may test his/her memory. Say "ball, "flag," "tree" clearly and slowly, about on second for each. Then ask the subject to repeat them. Check the box at right for each correct response. The first repetition determines the score. If he/she does not repeat all three correctly, keep saying them up to six tries until he/she can repeat them	Ball	1 ☐
	Flag	1 ☐
	Tree	1 ☐
		NUMBER OF TRIALS: ☒
III. ATTENTION AND CALCULATION		
A. Counting Backwards Test	(Record each response, correct = ☑)	(Maximum Score = 5)
Ask the subject to begin with 100 and count backwards by 7. Record each response. Check one box at right for each correct response. Any response 7 or less than the previous response is a correct response. The score is the number of correct subtractions. For example, 93, 87, 80, 72, 66 is a score of 4; 93, 86, 78 70, 62, is 2; 92, 87, 78, 70, 65 is 0.	93	1 ☒
	86	1 ☒
	79	1 ☒
	72	1 ☒
	65	1 ☐
B. Spelling Backwards Test		
Ask the subject to spell the word "WORLD" backwards. Record each response. Use the instructions to determine which are correct responses, and check one box at right fore each correct response.	D	1 ☒
	L	1 ☒
	R	1 ☒
C. Final Score	O	1 ☒
Compare the scores of the Counting Backwards and Spelling Backwards tests. Write the greater of the two scores in the box labeled FINAL SCORE at right, and use it in deriving the TOTAL SCORE.	W	1 ☒
		FINAL SCORE ____ (Max of 5 or Greater of the two Scores)
IV. RECALL	(correct = ☑)	(Maximum Score = 3)
Ask the subject to recall the three words you previously asked him/her to remember. Check the Box at right for each correct response.	Ball	1 ☐
	Flag	1 ☐
	Tree	1 ☐
V. Language	(correct = ☑)	(Maximum Score = 9)
Naming	Watch	1 ☒
Show the subject a wrist watch and ask him/her what it is. Repeat for a pencil.	Pencil	1 ☒
Repetition		

Page 1

08/20/2013 16:03 PAGE 08
DRAFT NOT FOR FILING

Folstein Mini

Ask the subject to repeat "No, ifs, ands, or buts."	Repetition	1 X
Three-Stage Command		
Establish the subject's dominant hand. Give the subject a sheet of blank paper and say, "Take the paper in your right/left hand, fold it in half and put it on the floor."	Takes paper in hand	1 X
	Folds paper in half	1 X
	Puts paper on floor	1 X
Reading		
Hold up the card that reads, "Close your eyes." So the subject can see it clearly. Ask him/her to read it and do what it says. Check the box at right only if he/she actually closes his/her eyes.	Closes eyes	1 X
Writing		
Give the subject a sheet of blank paper and ask him/her to write a sentence. It is to be written spontaneously. If the sentence contains a subject and a verb, and is sensible, check the box at right. Correct grammar and punctuation are not necessary.	Writes sentence	1 X
Copying		
Show the subject the drawing of the intersecting pentagons. Ask him/her to draw the pentagons (about one inch each side) on the paper provided. If ten angles are present and two intersect, check the box at right. Ignore tremor and rotation.	Copies pentagons	1 X
DERIVING THE TOTAL SCORE		
Add the number of correct responses. The maximum is 30.		TOTAL SCORE 5/30
23-30 = Normal / 19-23 = Borderline / <19 = Impaired		

Folstein MF, Folstein SE, and McHugh PR, 1975

CLOSE YOUR EYES

(Draw Intersecting pentagons on the back of this page before testing subject)

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Case 2:13-cv-00215 Document 1-10 Filed in TXSD on 12/19/16 Page 10 of 15

08302013:1603:P0150

HISTORY AND PHYSICAL

Chief Complant: cervical r/o. fx, but is eating

Past History: COPD, htn, glaucoma, ? lipids, cva x 2 hemiparesis, fx segment VT

Family History: smoker. electronic cigarettes.

Allergies: cipro, hydrocodone.

Operations-Minor:

Major:

Physical Findings: BP 128/60 Temp. 98° Pulse 80 Resp. 18 WI

Head dry/clear NAD. in w/c.
Neck
Chest clear.
Cardio-Vascular RRR S1S2
Abdominal BS+soft
Genito-Urinary
Skin D/C/Te.
Bones/Joints
Glandular
Neruromuscular

Pain Present Yes ☐ No ☐ Origin Location

Current Diagnosis: (1) COPD (2) htn, (3) h/o hem cva, (4) vascular dementia (5) glaucoma, (6) ? lipids
pt was had recent falls
suggest addl ortho exam.
Rehab Potential:

Advance Directives: Yes ☐ No ☐

Date: 5.2.13 ATTENDING PHYSICIAN'S SIGNATURE:

Name-Last	First	Middle	Attending Physician	Record No.	Discharged
Mills,	Willie	Jo	ECN.		

Exhibit K, Dec. 19, 2016
Page 10 of 15

08/30/2013 16:03:40.191

SILVERADO SENIOR LIVING - KINGWOOD
PHYSICIAN PROGRESS NOTES

Resident's Name (Last/First) Mills, Willie SO	Attending Physician: ECN

Date:	Notes:
3/18/13	FPPN: S: Pt report "I feel better" Staff at Silverado reports she tolerated Rocephin injections well and has improved symptoms - fatigue, mentation/alertness. O: V/S stable, pt afebrile, in bed and pleasantly confused. HEENT: PERRLA, normocephalic, MMM, neck supple, ϕ lymphadenopathy CV: S,S, RRR, ϕ m Resp: Lungs Bil CTA GI: BS+ x4, soft, n/t, ND, ϕ masses. Extremities: moves all 4, LE weakness bilaterally pedal edema +2 bilaterally A: UTI-resolving, Dementia, COPD, HTN, s/p CVA, anemia, dehydration P: start Ferrous Sulfate and Vit C for anemia cont. to monitor resolving UTI. Kara Steward FNPC
8.7.2013	FP PN - asked to look at a spot on her foot - S: pt has no c/o today - pain is controlled. O: Ox3 aware alert NAD. (R) foot - MTP & bunion callousedd, with central ulceration. dysthesia or warmth. A/P: (R) foot pressure sore - has upcoming appt w ortho for Xrays - may be able to D/C boot at that time, which will allow the area to heal. If boot is still needed, will have to offload that area & may require podiatry assistance

Exhibit K, Dec. 19, 2016
Page 11 of 15

08/29/2016 16:00:00 P0192

SILVERADO SENIOR LIVING – KINGWOOD
PHYSICIAN PROGRESS NOTES

Resident's Name (Last/First) Mills, Willie Joe	Attending Physician: EN

Date	Notes
9.24.2012	cont'd... —
	I asked Mrs. Mills about her breathing & what she wants to do if it gets bad again – she says she does not want to go back to the hospital & would rather put a plan / resources in to place here to be able to be comfortable. This goal of care is palliative in nature & Mrs. Mills would benefit from a palliative care plan, rather than aggressive treatment & re-hospitalization. She is significantly weaker now & has a sacral wound to boot now as a result of her hospitalization. D/W Leslie who was also at bedside.
10.22.2012	FP.PN – status –
	Mrs. Mills continues to weaken – Leans in her wheelchair most of the time. Her intake is greatly diminished and she has lost 10 lbs in the last month. She exhibits overall decline & it is only a matter of time until her status declines acutely – I do recommend a palliative care approach to her medical care

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09/20/2013:16:03:05 PM

Certificate of Service

I certify that in accordance with the Texas Rules of Civil Procedure I served a true and correct copy of this Application for Leave to Resign as Guardian of the Person and for Appointment of Successor Guardian of the Person on the parties listed below. This service was made by certified mail, properly addressed, return receipt requested, in a postpaid envelope deposited with the United States Postal Service.

Benson Comstock, LLP Clarinda Comstock Guardian Ad Litem One Riverway, Suite 2300 Houston, Texas 77056 Sent Via Certified Mail#: 7013 0600 0001 1819 6364	

SIGNED on August 30th, 2013.

DAVID R. DEXEL

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20160215009:09:03:pd1504

Cause No. 380,624

In The Matter of the Guardianship of	§	IN THE PROBATE COURT
	§	
WILLIE JO MILLS,	§	NUMBER FOUR (4) OF
	§	
An Incapacitated Person	§	HARRIS COUNTY, TEXAS

Order Appointing Successor Guardian of the Person

On this day, the Court considered the Application for Leave to Resign as Guardian of the Person and for Appointment of Successor Guardian of the Person filed by DAVID R. DEXEL, Guardian of the Person of **WILLIE JO MILLS**, an incapacitated person. The Court has reviewed the application and the documents filed with it and finds that an immediate need exists for the appointment of a Successor Guardian of the Person of Ward. The Court finds that the allegations contained in the motion appear to be true and that notice and citation is not required or has been given in the manner and for the length of time required by law. The Court makes the following specific findings of fact and conclusions of law based on a preponderance of the evidence:

Ward has previously been found by this Court to be an incapacitated person.

A continued need exists for a Guardian of the Person of Ward and it is in Ward's best interests that a Successor Guardian of Ward's Person be appointed.

The Ward's rights will be protected by the appointment of a Successor Guardian of Ward's Person.

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The Court makes the following specific findings of fact and conclusions of law based on a preponderance of the evidence:

1. The Court has venue under Section 610 of the Texas Probate Code, as well as subject matter jurisdiction.

2. _____ is not ineligible by law to serve as Successor Guardian of the Person of Ward.

3. Ward is totally without capacity as provided by Section 693(a) of the Texas Probate Code to care for herself.

IT IS THEREFORE ORDERED that _____ is appointed as the Successor Guardian of the Person of **WILLIE JO MILLS**, an incapacitated person.

IT IS FURTHER ORDERED that letters of Successor Guardianship of the Person be issued by the clerk of this Court on the qualification of Successor Guardian of the Person in the form and manner required by law.

IT IS FURTHER ORDERED that

DAVID R. DEXEL's resignation is accepted.

SIGNED on _____, 2013.

DAVID R. DEXEL, TBN 05671800
P.O. Box 66790
Houston, Texas 77266
TELEPHONE: (713) 527-9377
TELECOPIER: (713) 527-9379

_____
JUDGE PRESIDING

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DAVID R. DEXEL
Attorney At Law

September 13, 2013

Benson Comstock, LLP
Clarinda Comstock
Guardian Ad Litem
One Riverway, Suite 2300
Houston, Texas 77056
Sent via Email: ccomstock@mlbcc.com
Regular Mail and Certified Mail:
7013 0600 0001 1819 6401

Ms. Sherry Johnston
1390 CR331
Cleveland, Texas 77327
Sent via Email: sjohnst007@yahoo.com; SJohnston@cprod.com
Regular Mail and Certified Mail:
7013 0600 0001 1819 6432

Mr. Larry Mills
3103 Birch Park Lane
Houston, Texas 77073
Sent via Email: TheJock68@aol.com
Regular Mail and Certified Mail:
7013 0600 0001 1819 6425

Ms. Cindy Pierce
13076 Satcher Lane
Bedias, Texas 77831
Sent via Email: retiredmanlife@hotmail.com
Regular Mail and Certified Mail:
7013 0600 0001 1819 6456

Ms. Megan Christopher, Administrator
Silverado Senior Living – Kingwood
22955 Eastex Freeway
Kingwood, Texas 77339
Sent via Email: mchristopher@silveradosenior.com

IN RE: THE GUARDIANSHIP OF THE PERSON OF WILLIE JO MILLS, AN INCAPACITATED PERSON; CAUSE NO 380,624; IN THE PROBATE COURT NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

NOTICE OF HEARING

Dear Interested Parties:

Please take note that a hearing has been set on my ***Application for Leave to Resign as Guardian of the Person and for Appointment of Successor Guardian of the Person*** for Tuesday, September 24, 2013, at 2:30 p.m., located at the Harris County Civil Courthouse, Probate Court Number Four (4), 201 Caroline, 7th Floor, Houston, Texas, 77002.

A copy of that Notice is included herein.

P.O. BOX 66790 • HOUSTON, TEXAS 77266
TEL. 713-527-9377 • FAX: 713-527-9379 • *daviddexellaw@gmail.com*

Sincerely,



DAVID R. DEXEL
GUARDIAN

DRD/dls
enclosures

Cause No. 380,624

In The Matter of the Guardianship of	§	IN THE PROBATE COURT
	§	
WILLIE JO MILLS,	§	NUMBER FOUR (4) OF
	§	
An Incapacitated Person	§	HARRIS COUNTY, TEXAS

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on ***Guardian's Application for Leave to Resign as Guardian of the Person and for Appointment of Successor Guardian of the Person*** will be held on:

Tuesday, September 24, 2013 at 2:30 p.m.
Probate Court Number Four (4)
Harris County Civil Court House
201 Caroline, 7th Floor
Houston, Texas 77002

Respectfully submitted,

DAVID R. DEXEL, TBA 05671800
Guardian of The Person of:
WILLIE JO MILLS
P.O. Box 66790
Houston, Texas 77266
TELEPHONE: (713) 527-9377
FACSIMILE: (713) 527-9379

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served on the parties listed below in accordance with the Texas Rules of Civil Procedure, by depositing same, postpaid in an official depository under the care and custody of the United States Postal Service, Certified Mail, Return Receipt Requested, and Regular Mail and/or Facsimile, on this the 13th day of September, 2013, as follows:

Benson Comstock, LLP Clarinda Comstock Guardian Ad Litem One Riverway, Suite 2300 Houston, Texas 77056 Sent via Email: ccomstock@mlbcc.com Regular Mail and Certified Mail: 7013 0600 0001 1819 6401	Mr. Larry Mills 3103 Birch Park Lane Houston, Texas 77073 Sent via Email: TheJock68@aol.com Regular Mail and Certified Mail: 7013 0600 0001 1819 6425
Ms. Sherry Johnston 1390 CR331 Cleveland, Texas 77327 Sent via Email: sjohnst007@yahoo.com; SJohnston@eprod.com Regular Mail and Certified Mail 7013 0600 0001 1819 6432	Ms. Cindy Pierce 13076 Satcher Lane Bedias, Texas 77831 Sent via Email: retiredmanlife@hotmail.com Regular Mail and Certified Mail: 7013 0600 0001 1819 6456
Ms. Megan Christopher, Administrator Silverado Senior Living – Kingwood 22955 Eastex Freeway Kingwood, Texas 77339 mchristopher@silveradosenior.com Regular Mail and Certified Mail: 7013 0600 0001 1819 6449	

DAVID R. DEXEL

PROBATE COURT 4

09162201 13:52:04 2007

NO. 380,624

IN THE GUARDIANSHIP OF	§	**IN THE PROBATE COURT**
	§	
WILLE JO MILLS,	§	**NUMBER FOUR (4) OF**
	§	
AN INCAPACITATED ADULT	§	**HARRIS COUNTY, TEXAS**

REPORT AND RECOMMENDATION OF GUARDIAN AD LITEM

TO THE HONORABLE JUDGE OF SAID COURT:

CLARINDA COMSTOCK, Guardian Ad Litem ("GAL") was appointed on June 17, 2013 to investigate allegations made by family members concerning the best interests and care of the Ward, Willie Jo Mills after Ms. Mills had an incident at the assisted living facility where she resides, Silverado Kingwood. In this incident, Ms. Mills slipped or fell from her wheel chair in the common room of the facility and fractured her ankle. Additionally, concerns have been raised related to allegations made by Sherry Johnston, Ms. Mills' daughter, and other family members, and actions taken by Ms. Johnston in furtherance of her claims about care provided by Silverado Kingwood and the Guardian, David Dexel. The GAL makes the following report and recommendations to the Court:

I. SUMMARY OF RECOMMENDATIONS

1. It appears that Ms. Mills has had good care and has enjoyed living at Silverado Kingwood since moving there in 2009, and she has become close to many of the staff members and other residents. When it was suggested by Ms. Johnston that Ms. Mills be moved to a different facility due to a lack of care, the Guardian investigated, was unable to confirm the issues raised by Ms. Johnston and made a determination that a move would be very difficult at the current stage of life of this very fragile woman.

2. Despite concerns that relocation will likely be detrimental to Ms. Mills' health, Ms. Johnston and Ms. Pierce have been adamant that she be moved. Ms. Johnston has always believed and continues to believe that Ms. Mills has no dementia, although at least six doctors have diagnosed dementia, and that she should not be taking medications preferring natural remedies, supplements and juicing. She has accused Silverado, the Guardian and a variety of medical providers of conspiring to abuse Ms. Mills and neglecting her care when medical

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09162013:1529:P0071

treatments have been recommended and/or administered with which she does not agree, including hospice, palliative care, and circulatory system and dementia related medications. Recent assessments by nurses for purposes of locating a new residential facility have confirmed that, because of the right arm paralysis and the need to be fed, she is not an appropriate candidate for many facilities in either their assisted living or memory units, as she requires total care or a sitter to in place to assist with feeding and other ADLs.

3. The Guardian made the decision in May, 2013 to move Ms. Mills to a different room at Silverado where they could provide a higher level of care than was available in their assisted living area. This move resulted from concerns raised by Silverado staff that it was no longer safe in assisted living for Ms. Mills due to her care needs. Because this was a safety concern, the Guardian made the move immediately and did not have time to advise the family prior to making the move. Although the Guardian had previously discussed with family the possibility of the need for such a move, as well as recommendations by physicians that hospice and/or palliative care be in place, Ms. Johnston was surprised and disturbed by the move and responded by threatening to move Ms. Mills and engaging in loud and disruptive behavior in the community and in the presence of Ms. Mills. Ms. Johnston has also posted photos of Ms. Mills and other residents and their family members on a social media sites and, despite complaints and requests that the photos be removed, they have not been taken down. This on-going behavior, despite efforts to address concerns raised and mediate solutions during the investigation by this GAL, have resulted in visitation by Ms. Johnston being restricted by the Guardian.

4. Silverado has recently made the decision that Ms. Mills may not remain in their facility due to the on-going disruptions caused by Ms. Johnston's behavior when visiting Ms. Mills and by postings made online, in social media and by direct email to a variety of individuals. Additionally, David Dexel, the court appointed guardian, has filed a resignation of guardian and, presumably, will no longer be serving as guardian of Ms. Mills. Due to the ongoing family disputes, unrealistic denial of Ms. Mills' medical condition, and propensity to involve Ms. Mills in disruptive and disturbing behavior, it is in the best interest of Ms. Mills that a successor third-party guardian be immediately appointed, that such guardian independently locate an appropriate residential facility for Ms. Mills to ensure her safety and well being prior to September 20, 2013 and that appropriate medical treatments be continued to address Ms. Mills' on-going diagnosis of dementia and other health concerns. It is also recommended that clear guidelines be established

Add TWOTHON

2016029160 2016-12-13 15:25:29 P07

with family members regarding authorization to make healthcare decisions, access to information by family members and appropriate visitation.

II. FAMILY AND PROCEDURAL BACKGROUND

5. Ms. Mills has two daughters, Sherry Johnston and Cindy Pierce; and one son, Larry Mills. This guardianship proceeding and application for 867 Trust was originally filed in May, 2008 by Larry Mills, represented by Jason Ostrom. At the time, Ms. Mills resided at Park Manor Humble, but was moved to Silverado Senior Living – Kingwood on February 12, 2009 where she has resided for the past four and a half years. It is reported that Ms. Mills was in fair health until 1999, when she had a stroke leaving her with right side paralysis and forced her to quit working but she remained independent.[1] In 2007, she had a second stroke which left her with severe motor deficits, requiring full assistance with ADLs. At that time, her sister moved in with her and managed her affairs.[2] David Dexel was appointed as Temporary Guardian in October 2008.

6. Ms. Johnston maintains that, when Ms. Mills was evaluated in 2007, she was on pain medication and that the evaluation was not a good representation of her capacity. She states that Ms. Mills did not then and does not now have dementia. She complains that there are only two caregivers assigned to Ms. Mills' hall at Silverado and at times only one, that Ms. Mills requires three persons for transfers, and that caregivers only remain in place when family is present, but she believes that when family leaves, the staff is reduced. Ms. Mills was on a three person transfer after she fractured the ankle, but has since been reduced to a two person transfer. She still wears a plastic boot to immobilize the leg when she is out of bed and they have added an inflatable boot to the other foot to avoid potential injury to the other foot due caused by bumping and bruising due to the delicate nature of Ms. Mills' skin.

7. Ms. Johnston states that, in the Fall of 2012, she complained for weeks that Ms. Mills needed to be admitted to a hospital before Ms. Johnston finally took her to a clinic herself where she was diagnosed with Pneumonia. Ms. Johnston believes this was caused by Silverado staff not getting her out of bed enough and not keeping her properly hydrated. Ms. Johnston reports fears that her mother has been placed on hospice care and that doctors have given up on her. The

1 Assessment of Capacity, Mark Moeller, MD, March 2009.
2 *Id.*

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care manager reports that Ms. Mills was reported by Silverado to require hospitalization, that she was taken to the hospital by ambulance and treated for a period of time then returned to Silverado. Upon return, the treating physician suggested that hospice would provide additional resources that would benefit Ms. Mills, but Ms. Johnston was opposed to hospice care so it was never implemented to accommodate her concerns. The Guardian signed a no-not-resuscitate order, which was also opposed by Ms. Johnston despite Ms. Mills' fragile condition and clear expressions of the desire for palliative care in a Directive to Physicians.

8. Ms. Johnston has stated that Emeritus has a skilled nursing unit and separate dementia or memory unit which is preferable, where she could have a private room, television and shared bath. However, since Emeritus was featured on a PBS documentary which Ms. Johnston encouraged us all to view, she has not recently advocated for the Emeritus Kingwood facility. The undersigned toured the Emeritus facilily, was not permitted on the skilled nursing floor but on the memory care hall was unable to locate any caregivers, giving rise to concerns that they would have and lower caregiver to resident ratio. Additionally, it appears that even the facilities that have on-site skilled nursing units will not guarantee that a memory care or assisted living resident will be admitted directly to that unit for care without first being admitted to a hospital.

9. Ms. Johnston reports feeling that Ms. Mills was moved to a more restrictive room at Silverado without justification and without proper notice to the family. She strenuously objects to Ms. Mills being placed on hospice or palliative care. She desires full access to and input on all medical records, medical decisions, visitation and diet. She has requested increased frequency of diaper changes/checks, relocation of Ms. Mills (initially back to her old room, now to another facility), and increased interaction with other residents and families. She does not agree with the use of third party caregivers for Ms. Mills, taking the position that Ms. Mills' estate should not incur this expense, but that the facility should employ sufficient staff to meet the one-on-one needs of Ms. Mills. On this point, Larry Mills agrees and had requested that the sitter be discharged. When sitters are then discharged, complaints are made that she again does not have sufficient care.

A. <u>MEDICAL HISTORY/CAPACITY ASSESSMENTS:</u>

10. The undersigned initially met Ms. Mills July 2, 2013 at Silverado. Caregivers describe her as soft spoken, compliant, and unassuming. She was dressed, well groomed with face made

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up, but in bed when I arrived. Ms. Pierce had left just prior to my arrival and was reportedly there from noon to 3:30. Ms. Mills' leg was in a soft cast/boot and she reported having ankle pain. She was unable to describe how she had injured her ankle, but believed that it happened there in her room. She reports that visits with her children are "good." She states that she lies around all day and would enjoy being more social. She reported having napped that day, but was extremely tired in appearance and had some difficulty focusing and answering questions, so the interview was terminated to allow her to rest.

11. Silverado's community areas are clean and active. I was told that the food was prepared by a chef who had previously been a personal chef for the Carrabba family, that all family members were invited to eat with residents at no charge, and that Ms. Mills seemed to enjoy the food. Ms. Mills is currently receiving physical therapy twice a week. Several capacity assessments have been completed as part of the guardianship process or, more recently, by the Methodist Neurological Institute in an effort to better understand her current need:

(a) Guerrini Assessment: Joseph Guerrini, M.D. performed a mental status exam on May 16, 2008 and found hemiparesis and aphasia, noting Ms. Mills was able to speak, with moderate to severe mental impairment, and was incapable of all activities of daily living and partially incapacitated due to stroke.[3]

(b) Rubashkin Assessment: In June 2008, Dr. Boris Rubashkin conducted a Mental Status Examination after meeting with Ms. Mills in February, 2008, finding a diagnosis of vascular dementia with depression, strokes, progressive illness, and finding Ms. Mills to be totally incapacitated and unable to make reasonable decisions.[4] A copy of that assessment is attached hereto as "Exhibit A."

(c) Kunik Assessment: In August, 2008, this Court appointed Mark E. Kunik, MD to perform an independent evaluation of Ms. Mills' capacity. He examined Ms. Mills at Park Manor and was able to review the facility's medical records as part of that review.[5] Ms. Mills is reported to have a history of stroke, emphysema, heart disease, vascular disease and hypertension and noted to require near total assistance in daily care since the stroke in 2007. She was found to have moderate deficits in understanding and expressing language, short and long term memory, attention, concentration, insight, judgment and problem solving. She had trouble naming her

3 A copy of the Guerrini Assesssment is located in the Chart at Silverado.
4 Mental Status Examination, Boris Rubashkin, June, 2008.
5 Doctor's Mental Status Examination, Mark E. Kunik, MD, MPH, August 11, 2008.

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children, and was not oriented to time or place. She could not describe her assets or monthly income/expenses and had very little perception of her medical or psychological problems. Dr. Kunik concluded that Ms. Mills was totally incapacitated as a result of vascular dementia, with a poor prognosis. A copy of this assessment is attached hereto as "Exhibit B."

(d) Moeller Assessment: In March, 2009, Mark S. Moeller, M.D. prepared an Assessment of Capacity at the request of David Dexel, who was serving as Temporary Guardian. Dr. Moeller found Ms. Mills to be wheelchair bound, speech low and slow, not grossly depressed or anxious, but with poor short-term memory. She was unable to comment on current events, did not know the current president, but was able to give reasonable estimates of the value of her home and her bills. Her knowledge and judgment about her medical condition was poor. Dr. Moeller found her to be partially or moderately incapacitated, with moderate dementia post two strokes, poor prognosis, but retaining the capacity to participate in the selection of residential placement, the ability to handle $50.00 or less and the ability to "decide where she wants her assets/estate to go upon her death."[6] A copy of this assessment is attached hereto as "Exhibit C."

(e) Fisher Assessment: Most recently, Ms. Mills was evaluated on August 23, 2013 at the Methodist Neurological Institute by Stanley Fisher, M.D. A copy of his reports is attached hereto as "Exhibit D," in which he finds Ms. Mills to have severe dementia, prescribes aspirin and the Exelon patch and prescribes smoking cessation.

(f) Medical Record Review: A review of medical records at Silverado notes diagnoses of depression, dementia, high blood pressure, COPD, glaucoma, hyperlipidemia, hyperkalemia, pneumonia (Sept., 2012), anxiety and a long history of skin breakdowns and tears.

i. A do-not-resuscitate order was signed in 2009. Ms. Mills had previously executed a Directive on October 17, 2007, requesting no extraordinary measures and palliative care. September 2012 chart notes reflect an inquiry of Ms. Mills about the difficulty she was having breathing after returning from the hospital. Ms. Mills reportedly stated that she did not wish to go back to the hospital and would rather put resources in place at Silverado to make her more comfortable. The doctor recommended palliative care rather than aggressive treatment and re-hospitalization. She was reported to be significantly weaker with a sacral wound as a result of that hospitalization. When the GAL visited recently with Ms. Mills, she appeared to understand what a Directive was and was asked whether she had strong feelings one way or another about

6 Assessment of Capacity, Mark Moeller, MD, March 2009.

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hospital care and the use of extraordinary measures in the event of a terminal or irreversible condition from which she was not expected to survive. She indicated that she preferred to avoid hospitalization and that she would not want to be revived or have extraordinary measures implemented.

ii. The September 24, 2012, six (6) month assessment just after Ms. Mills returned from hospitalization for pneumonia notes that she sleeps well, naps after lunch, is depressed, requires full assistance with bathing, dressing, toileting, partial assist with eating and requires assistance with decision making due to dementia. Notes show that she has no trouble communicating and although she was capable of partial ambulation and transfer in February, 2012, she now requires a wheelchair and full caregiver assist. She is incontinent of bladder and bowel, has a history of UTIs, high blood pressure, dementia, COPD, Glaucoma, hyperlipidemia, hyperkalemia, pneumonia (Sept 13-22, 2012), and skin breakdowns. October notes indicate continued weakness, diminished intake, weight loss (10 lbs.) in the prior month. Again, palliative care is recommended. Previous notes indicate that in February, 2011 she was not incontinent of bowel and anxiety was added to her diagnoses. In February, 2010 she was fully continent, having physical therapy 3 times a week, with skin breakdowns and recommendation for smoking cessation noted. In February, 2009 admission notes indicate that she is incontinent requiring partial assist with toileting, hums when she is upset, enjoys gardening, music, religious services, and is able to sit up and assist with meals. She was unable to sit up without supports and would fall without lateral rests on chair.

iii. In March, 2013 a swallow study was considered, weight was being monitored, orders were given that family members not assist with transfers because skin tears and bruising were resulting; orders included barrier cream, 1-2 hour position changes and care with transfers.

iv. In June, 2013 Ms. Mills fell and fractured her right ankle. An x-ray on 6/15/2013 revealed right oblique nondisplaced distal tibia and fibula. Three person transfers were ordered during this time. On June 18, 2013 she was prescribed Lexapro for depression, Macrobid for a UTI, and high blood pressure medications. Ms. Mills has a documented history of being treated for persistent UTIs in September 2012, March 2013, May 2013, and June of 2013. There is also a history of a variety of skin tears, blood blisters, bruising and breakdowns documented in her medical records, and it is noted that Ms. Mills' skin bruises and tears

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extremely easily when bumped or coming into contact with the wheelchair.

v. Smoking cessation has been recommended by physicians. Family members report Ms. Mills asking for a puff of a cigarette even though she cannot hold it herself. An electric cigarette was made available but family members say it's not the same. Ms. Mills daughters request that it should be available to Ms. Mills at all times, however the caregivers at Silverado report that she never asks for it herself, so they started keeping it at the nurses' station.

B. EVENTS LEADING TO APPOINTMENT OF GAL:

12. A summary of the events leading to the appointment of a GAL, as pieced together from email, chart notes, reports by family members, Silverado staff, Mr. Dexel and various caregivers follows. It appears that Ms. Johnston became dissatisfied with Silverado in the Fall of 2012 and with David Dexel as guardian in the Spring of 2013. Between early October of 2012 and March, 2013, email reflect appreciation of Mr. Dexel's openness and cooperation with Ms. Mills' care and finances. In September and October, 2012, after Ms Mills was released from hospital with pneumonia, the doctors recommended hospice and palliative care, based on statements by Ms. Mills in September that she did not wish to go back to the hospital and that she wished to be kept comfortable in place at Silverado. Between that time and the Spring of 2013, Ms .Mills slowly regained strength. During this time, her daughters were regular in attendance at Silverado and supplied her with natural juices prepared by Ms. Johnston. She was also receiving medical treatment prescribed by Dr. Coon-Nguyen. The sisters became upset with Mr. Dexel after a family meeting had to be rescheduled and the family was not notified of the time change in time, and missed the meeting. Demands were made for meeting minutes but such are reportedly not typically kept. Mr. Dexel repeatedly assured the family that medical information was freely accessible to the family. At this time, complaints were made that Silverado was understaffed, that they were not keeping Ms. Mills properly cleaned and were not able to keep other residents under control. The claims were not observed by the guardian and his employees and, when it was demanded that Ms. Mills be moved to another facility, he determined that the move would be detrimental and traumatic for Ms. Mills. Ms. Johnston persisted, claiming that hospice was recommended either to get rid of Ms. Mills or to relieve Silverado's own shortfalls in staffing.

13. The accusations then began to encompass anyone or anything that was perceived as being affiliated with Silverado or with hospice, as complaints were made against caregivers, administrative staff and doctors who provided treatment for Ms. Mills. Ms. Mills' daughters

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have been critical of the new administrator, Ms. Megan Christopher, asserting that she is too young and inexperienced to run Silverado. Ms. Christopher, in turn, has apparently run a much "tighter ship" than the previous administrator who reportedly often provided Ms. Johnston great leeway in order to avoid conflicts with her.

14. In May, 2013, Ms. Christopher and staff determined that it was in Ms. Mills' best interest to be moved to a room in a different wing, or "neighborhood," of the facility where a higher level of care was offered than in the unit she had occupied. Mr. Dexel was advised that the move was necessary to protect the safety and well-being of Ms. Mills. Apparently this had been raised with family in the past and the sisters were against such a move, but as it was a matter of personal safety and permission was obtained from the guardian and Ms. Mills was moved without prior notice to the family.

15. Ms. Johnston reports that she arrived at Silverado on May 16, 2013 to find that Ms. Mills and her belongings had been moved and other residents stating, according to Ms. Johnston, that "they did not want to be the bearer of bad news." Ms. Johnston reports that she was afraid that Ms. Mills had died, until she inquired and the Administrator advised her that Ms. Mills had been moved to another room. Ms. Johnston maintains that Silverado overstepped their authority, reiterates that Ms. Mills does not have dementia, should not be on a hospice unit (although it is not a "hospice" unit) or require the additional care provided on the new unit and that Ms. Mills has no one to socialize with on that side, although she is free to spend time with the residents of the other unit in the community areas. Ms. Johnston insisted that her mother be moved back immediately. Reportedly, Ms. Johnston was "screaming" in the community that "Silverado sucks" and was at the facility from 4pm to 8pm that evening disrupting the peace. Ms. Johnston arrived early the following day, May 17, 2013 with boxes and insisted the Ms. Mills be moved that day and that she was firing Mr. Dexel. At this time she began taking photographs of caregivers attending to wound care and Ms. Mills wounds and recording conversations with a variety of people. Mr. Dexel advised Silverado that, if she could not have peaceful visits the police should be called and Ms. Johnston was asked to leave after being loud, offensive and taking photographs (after being asked to stop), and in fact the police were called.

16. Ms. Johnston requested a nanny cam in the room to document the frequency of changes and time spent in bed. When asked, she denied that she intended to try to move Ms. Mills, however she clearly stated that intention on an audio recording she has provided, which also

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documents her loud and offensive remarks made in the presence of Ms. Mills and in the community at Silverado. As a result, Mr. Dexel revoked visitation until such time as visits could be peaceful and made efforts to schedule a meeting to discuss visitation. Ms. Johnston insisted she was a whistle blower and that Silverado caregivers would retaliate against Ms. Mills. No evidence of retaliation has been found by the undersigned. Ms. Johnston also provided audio files of the 911 calls made by a Silverado employee that day, which reported that she has caused problems the previous day and that she had been known to carry a weapon in the past.

17. Ms. Johnston provided an 11 minute audio recording of her entrance to Silverado on May 17, 2013, in which she states she wants to file a complaint with Silverado and is given a number to call. She then locates Ms. Mills and states that she wants to take pictures of her leg and that she looks terrible, then grills the caregiver. She states that momma is going to be leaving and that she filed a complaint. She then has a very excited phone call with Mr. Dexel during which she makes a scene in the community and raises complaints about care and her mother being moved, that she has little communication with civilized human beings on this wing, that she will take him to court, have an administrative hearing, have Greg Abbott involved, etc. She states she wanted her mother placed anywhere but there and doesn't care if she is put in a rat-hole dump because she is a whistle blower and there is now a conflict, and then threatened to have Mr. Dexel's license taken away. She then told Ms. Mills that she had a big disagreement with Mr. Dexel and attempts to take photos of Ms. Mills. When asked to leave, she refuses and states she will wait for the police to arrive. She then calls Mr. Dexel, who asks if she is trying to move Ms. Mills, which she denies. He tells her he does not want her upsetting her mother and she can't visit until they can sit down and discuss it as adults. After walking through the community yelling, she leaves, gets in her car and the audio ends.

18. Efforts were made on May 20th to schedule a meeting at 4PM to allow Mr. Dexel, Ms. Christopher and Ms. Johnston to discuss visitation. This was the only available day to meet due to travel schedules. Ms. Johnston later said she could not get off until 4:30pm and was told they would wait for her. She later emailed, declining the meeting until they had representation for herself, her mother, and her siblings. Mr. Dexel reports that he understood that the meeting was to proceed, confirmed this via email, and he and the Silverado staff waited until 6PM for Ms. Johnston to arrive before emailing Ms. Johnston asking her to provide dates and times when she planned to visit Silverado so that accommodations may be made. Silverado staff states that they

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requested prior notification of Ms. Johnston's visits to prevent her from moving Ms. Mills and to ensure peaceful visits, but that Ms. Johnston refused to give notice. They state that an email notice from Ms. Johnston that she was coming for a visit would have been sufficient.

19. Ms. Johnston provided an audio file of a partial call to Silverado in which she had apparently requested an address for a medical provider and is told they have to get permission from Mr. Dexel to provide the information. Ms. Johnston then attempts to rephrase what she is told, apparently seeking an admission that they are refusing to give information to different family members. She inquires about who is sitting with Ms. Mills, who put them in place and who that person is affiliated with. She then asked for a call back in the next 3-4 minutes.

20. May 21, 2013, Ms. Johnston emailed Mr. Dexel inquiring as to whether Ms. Mills was receiving hospice care. Mr. Dexel responded that she was not on hospice and notes that there was no agreement among the family members when the doctor spoke of it at the last meeting.

21. May 26, 2013, Ms. Johnston wrote a letter to Mr. Dexel requesting a thirteen point list of information related to recent decisions made regarding Ms. Mills' placement and medical care and requesting certain tests be performed, a copy of which is attached as "Exhibit E." Later email was exchanged with Ms. Johnston explaining that she was not banned from visits but simply asked to give notice until such time as a meeting is scheduled, suggesting June 11th. Ms. Johnston was unable to meet that day due to her own travel plans and stated she wanted other Silverado management present at any meeting as well as her siblings and counsel.

22. May 31, 2013, Ms. Christopher emailed Ms. Johnston asking for dates when she would be available after she returned from vacation and they would schedule around her and be sure Le Riggs, from Silverado, was available. June 4, 2013, Ms. Johnston emailed a request for an outline of topics to be discussed and a list of all parties, by name, who would attend. She emailed Mr. Dexel the following day requesting an agenda, stating that Ms. Mills had not had a primary care physician (PCP) since 2008 and that having Dr. Coon-Nguyen at Silverado serve as her PCP was not in her best interest, because she is a hospice doctor and represents Silverado. She demanded an independent physician. Ms. Johnston emailed Ms. Christopher demanding to know who authorized restriction of phone calls after she called the unit and was told she needed to speak to Ms. Christopher before speaking to Ms. Mills. Ms. Christopher later emailed Ms. Johnson stating that the staff was confused and this was an error, that visits would not be restricted if she would let her know when she is coming and Ms. Christopher again requested a

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date for a meeting. Ms. Johnston responded that she works long hours and should not have to make appointments. The Adminstrator responded that, because the last two visits were so disruptive to other family members, residents, staff and Ms. Mills that she wanted to be aware of when Ms. Johnston would visit until it was clear that visits would be peaceful.

23. On June 5, 2013, Ms. Johnston's attorney, Bill Hester, wrote to Mr. Dexel inquiring about why the family visits, other than with Larry Mills, had been restricted, why Ms. Mills was placed in a facility that is unsuitable for her condition and why they were trying to prescribe hospice when Ms. Mills is not terminal.

24. Ms. Johnston provided an audio file dated June 12, 2013, documenting Cindy Pierce arriving at Silverado, asking the Administrator to call Mr. Dexel to see if Ms. Mills could be taken out of the facility for a walk to the hospital next door. She greets Ms. Mills briefly. Ms. Christopher explained that there is no need to call about taking Ms. Mills out for a walk, that there are no restrictions on other family members, but that Ms. Johnston had caused a disturbance in front of other residents, their families and Ms. Mills so Silverado wanted two or three visits by Ms. Johnston with 30 minutes prior notice to ensure the visits would be peaceful, but that Ms. Johnston had refused. Ms. Christopher explained that Ms. Johnston was escalated and her temper was high, and she has not provided a date to meet or notice of when she would come visit. Ms. Christopher states that Ms. Johnston threatened to fire Mr. Dexel and remove Ms. Mills, so they are concerned about Ms. Mills' safety. Ms. Pierce responds that their brother Larry Mills was the one who manipulated their mother and Ms. Pierce had to sue his entire family. She states that Larry Mills never visits Ms. Mills, that when they tested Ms. Mills for dementia she was on heavy drugs, that the stroke was caused by Larry Mills manipulating their mother and stress. She states that Larry Mills had hidden all of their mother's assets and that's how this got started. Ms. Pierce states that Ms. Johnston is upset, but that the staff at Silverado love Ms. Johnston, that when Ms. Mills was moved without prior notice to the family she thought Ms. Mills had died, and that it was unprofessional to have a meeting without notice to the family. She complains that Mr. Dexel does things despite the family's wishes and without notice of meeting changes and decisions, and that Ms. Johnston is very emotional about their mother. They did not like Ms. Mills being moved and she reminds Ms. Christopher that Ms. Mills is not supposed to be kept in her room and that "the other day" there was a strong odor of urine in the room and she was soiled or a soiled diaper was left in the room, and that Ms. Mills is

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not able to leave the room on her own to get away from the odor. She says that Mr. Dexel had not returned her calls.

25. June 15, 2013, Ms. Mills was reportedly in the common rooms when she apparently fell from her wheelchair, fractured her ankle and was taken to the hospital for treatment. The family was informed. The family claims that they must have placed her straight up in her chair and not kept an eye on her, as it appeared that she slipped from the chair and her foot caught in the foot paddle. The undersigned is not aware of any eye witnesses who can confirm this, but Ms. Mills was found on the floor by caregivers. Ms. Johnston and Ms. Pierce appear to be planning a lawsuit against Silverado regarding this incident and have inquired about Mr. Dexel's intention to file suit on behalf of Ms. Mills.

26. Ginger Lott, the care manager retained by Mr. Dexel, made arrangements to take Ms. Mills to a follow-up appointment with the orthopedist and invited Ms. Johnston to attend and visit with Ms. Mills. A recording was provided by Ms. Johnston that appears to be of the telephone call with Ms. Lott, in which the address and time is given for the appointment. Ms. Lott reports that Ms. Mills is doing fine, that the foot is fractured, she is in a soft cast/boot and that she is to follow up with her regular physician. Ms. Johnston reminds that Ms. Mills has no primary care physician and that Silverado said she cannot visit unless she makes reservations with Ms. Christopher. Ms. Lott said she spoke to Ms. Christopher and Ms. Johnston can now go visit at Silverado.

27. Silverado staff reports receiving complaints that Ms. Johnston then came to visit, spoke to several residents and then called their family members at home, asking that they intervene and report back about Ms. Mills' activities. Ms. Lott reported that Ms. Johnston was at the facility from noon until 10pm that Thursday and then back again before breakfast Friday morning, and was threatening caregivers, taking photographs, and not allowing Ms. Mills to rest and elevate her foot as instructed by her physician. Ms. Lott states that Ms. Mills cried at one point because Ms. Johnston was insisting that Ms. Mills be up and socializing when she was tired, her leg hurt and she was accustomed to going to bed at 8:30PM. Ms. Lott also reports that Ms. Johnston interviewed residents and family members, made them uncomfortable and attempted to get involved with the care of other residents.

28. June 21, 2013, Ms. Johnston emailed Ms. Christopher with a request for a list of all employees who will attend the requested meeting, the job position and responsibilities of each

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and the topic and outline of such meeting. Later that day, Ms. Christopher reported to Mr. Dexel that Ms. Johnston's visits had been "something else" as she was telling caregivers they "didn't know what they were doing" and that she would teach them how to care for Ms. Mills and was threatening to photograph what they were doing. She also reported that Ms. Johnston was photographing the state mandated forms on the walls and kept Ms. Mills up until after 10pm the previous night, when Ms. Mills typically prefers to go to bed early. It was reported that Ms. Johnston was interviewing other families asking for details of what had occurred while she was away, making them uncomfortable. While the doctor recommended that Ms. Mills be kept out of her chair with her leg elevated, Ms. Johnston refused to allow caregivers to do so, resulting in Ms. Mills being in her chair from breakfast until approximately 1PM, then insisted that she get up for happy hour that evening. She reports that staff is very uncomfortable with Ms. Johnston's behavior and requested assistance in dealing with her.

29. Ms. Johnston provided an 11 minute audio file of her arriving at Silverado on June 21, 2013, in which she comments that she put her gun in the trunk and states that "Diane the nurse is working today, let's see what happens." She greets people on her way in, someone mentions that her mom looks like she is in pain. Ms. Johnston comments that it's a big dumb mess, inexcusable, that she fell out of chair, broke leg, and were not watching her. The other person says sometimes you can even be watching and things happen. She then discusses the juice she brings in and states doctor said the leg was broken in two places, put her in a soft cast, and to keep her still. She states that they had her up straight in her chair, didn't sit her in it correctly and down she went. She plans to rub natural progesterone on her skin to make new skin and bones. She asks why Ms. Mills was not eating with friends. She left juices in the kitchen with instructions for serving to Ms. Mills.

30. Mr. Dexel emailed the family and facility advising of the appointment of a guardian ad litem and temporarily suspended visitation privileges of Ms. Johnston as a result of the complaints by the facility staff. Mr. Dexel reports that on June 24, 2013, Ms. Mills' lounge chair had been moved from her room. Ms. Christopher reports that, at Ms. Johnston's request, they scheduled maintenance to bring the chair to the common area for the wing where Ms. Mills used to reside so she could visit with other residents, but before maintenance could come Ms. Johnston moved the chair herself and placed it where is was blocking wheelchair and walker access, so the chair was returned to the room. Staff also reported receiving complaints from

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family members of other residents that Ms. Johnston had called over the weekend asking them to report to her about activities at Silverado. Ms. Johnston also contacted the nurse for updates, then emailed Ms. Christopher stating that the nurses were always busy and requesting that the sitter be permitted to call her to tell her how Ms. Mills slept, how therapy went and how her lunch went. Ms. Christopher responded with information about her care, food, sleep, breaks, schedule, reported pain levels, therapy and invited her to talk to the nursing staff. The following day, Ms. Johnston emailed Mr. Dexel asking whether she was permitted to speak with Ms. Mills' personal caregiver about Ms. Mills' care. June 26th, she emailed stating that she is disappointed with oversight of Ms. Mills and requested that she be moved to another facility.

31. On July 2, 2013, Ms. Pierce asked Mr. Dexel why there was no sitter in place for the past week and suggested that a sitter could help extracting mucus and assisting with a vaporizer. She states that Ms. Mills is depressed because Ms. Johnston cannot visit and that Silverado is still understaffed and not checking in regularly enough (she had waited 20 minutes).

32. July 3, 2013, Ms. Johnston sent an email to a long list of individuals, including Silverado administration, Mr. Dexel, her attorney, the court and others entitled "Mistreating residents, no help." She states that she wished to file a complaint stating abuse by not having enough care givers for the residents, causing her mother to fall and break her leg. She states that Ms. Christopher has not responded to her email requesting information about her mother and she has had the guardian revoke her visitation rights, creating fear for Ms. Mills.

33. On July 8, 2013, Ms. Johnston sent an email asking when the children were going to be informed about Ms. Mills' physical health and who was going to pay for her medical bills when she has to return to the doctor. Mr. Dexel responded to Ms. Johnston and all interested parties reminding Ms. Johnston that the family has always had access to Ms. Mills' health information, and offered to schedule a staff meeting, as they have done yearly, with himself, Ms. Lott, and the family. Silverado administration then responded and suggested they schedule a weekly phone conference to allow Ms. Johnston to ask any questions she might have and share concerns about Ms. Mills.

34. July 12, 2013, a telephone conference was held and Mr. Dexel, Ms. Christopher, the undersigned GAL, Ms. Johnston, Ms. Pierce, Mr. Hester (their attorney) and Ginger Lott participated. Larry Mills was also invited but chose not to attend, as the topic was to be reinstatement of visitation for Ms. Johnston. After much discussion, it was agreed that a sitter

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would be in place between the hours of 10AM and 9PM, that Ms. Johnston could visit from 10AM to 8 PM, and that during her visits she would spend time with Ms. Mills, would not raise complaints or disputes in the presence of Ms. Mills, and would refrain from speaking with other residents and family members about complaints she has about Silverado. If she had a complaint it was agreed that she would raise the complaint in Ms. Christopher's office or directly with the staff, but not out in the community. It was agreed that the family would have two to three days notice of care plan meetings, and be given optional dates for scheduling purposes. On my next visit with Ms. Mills on Saturday, July 13, 2013 I missed seeing Ms. Johnston by about ten minutes and found Ms. Mills enjoying an Elvis impersonator in the community.

35. July 16, 2013, Ms. Johnston wrote to Ms. Christopher requesting that a lift be used for transferring Ms. Mills to attempt to avoid further bruising of the arms caused when lifting with a sheet and by the arms. She also emailed inquiring about obtaining a copy of medical records. Ms. Christopher responded that she consulted with the physical therapist, who said the current transfer method was appropriate but if she still desired a lift, consult with Mr. Dexel for authority. Because Ms. Mills is not on home health or hospice, this would be an out-of-pocket expense. Mr. Dexel informed her that he was having copies made of medical records and would leave them in the room for her. Ms. Johnston then responded that different methods of transfer are used each time and that often three people are not available at Silverado to assist with transfers.

36. July 21, 2013, Ms. Johnston emailed a suggestion that we all view a PBS broadcast which was highly critical of Emeritus Assisted Living.

37. July 24, 2013, Ms. Johnston emailed requesting an accounting of funds spent from Ms. Mills' estate for care in the new room at Silverado and additional care required as a result of Ms. Mills' fractured leg.

38. August 6, 2013, Ms. Johnston forwarded a link to a posting she made on a website called stopguardianabuse.com, which she copied to a long list of recipients. This posting included a photograph of Ms. Mills and vocalized complaints about care received at Silverado and made some unsubstantiated accusations against Silverado, the guardian and the guardian ad litem.

39. August 9, 2013, Ms. Johnston emailed with questions about when the investigation would be complete, when a family meeting would be scheduled and who would be following Ms. Mills orthopedic treatment now that her orthopedist is retiring.

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40. August 14 2013, Mr. Hester, wrote to Mr. Dexel advising that Ms. Mills needed to be moved to another facility (a copy of the letter is attached hereto as "Exhibit F"). He claims that Ms. Mills does not have dementia and that she should not be placed in a dementia unit where she is unable to communicate with other residents. He complains about Ms. Johnston being kept from visiting, and states that information about health concerns and injuries is not being provided to family. He states that there are more suitable facilities in the area available at a lower cost, but does not name them. He states that Silverado is not providing proper care for Ms. Mills. Mr. Hester demanded that action be taken within two weeks or legal remedies would be sought.

41. August 20, 2013, Ms. Christopher emailed to remind Ms. Johnston that, pursuant to our July 12, 2013 conference call, her visits at Silverado are to be limited to visiting her mother and not discussing care at Silverado with other residents at the facility and or taking photographs other than for recreational purposes. Ms. Christopher also emailed Ms. Johnston and asked that guests step out of the room to give caregivers some space when they are changing Ms. Mills. Ms. Johnston objected, stating that they have been bathing their mother for years and this policy should not apply to them. She also reports her mother is having extreme skin tears.

42. Ms. Johnston responded that the only discussion on the conference call was that visitation would take place during certain hours. She was not told not to take photos and to step out of the room when Ms. Mills was being changed. However, Mr. Dexel had sent an email after becoming aware that Ms. Johnston had posted photos on the internet, asking her to remove them from the public domain.

43. August 24, Ms. Johnston emailed stating that Ms. Lott was abusing her mother by taking her to see Dr. Fisher and failed to hold Silverado accountable for breaking her mother's leg. The undersigned agreed with Mr. Dexel that it was in Ms. Mills' best interest to have an outside neurology specialist evaluate Ms. Mills' because her daughters continued to assert she had no dementia, despite at least four other physicians diagnosing her, and because she was clearly exhibiting signs of short term memory loss and decreased functioning. Dr. Stanley Fisher of the Methodist Neurological Institute evaluated Ms. Mills on August 23, 2013 and made a finding of severe dementia and prescribed aspirin and the Exelon patch. His report is attached hereto as "Exhibit D."

44. August 26th, Ms. Johnston emailed stating that she learned Ms. Mills was receiving treatment for dementia, and that they have asked for another doctor of their choosing and that

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they be present for appointments. She states that Mr. Dexel is deliberately jeopardizing their mother's life by experimenting with medications and claims that her rights are being violated, and attaches a copy of sections of the Texas Human Resources Code with highlighted sections which she claims are being violated.

45. Finally, Friday, August 30th, Ms. Christopher contacted Mr. Dexel to report that Ms. Johnston has continued having lengthy discussions with other family members and making demands on caregivers and administration related to policies and procedures. She reports that Ms. Johnston's conduct was now posing an active threat to the health, welfare and safety of her mother and others in the community, and asked that Mr. Dexel take action to control her behavior. In response, Ms. Johnston states that the accusations made by Silverado are not true and she asks whether there is any intention to pursue Silverado for breaking Ms. Mills' leg.

C. INTERVIEWS:

46. The undersigned spoke to several family members to obtain background information about Ms. Mills and her current situation at Silverado Senior Living. Initially, most information was provided by Sherry Johnston, who provided by email much documentation and many recorded conversations related to her experiences with Silverado Senior Living in recent months. The undersigned also interviewed family members, staff at Silverado, and caregivers as part of this investigation. The following summaries are of interviews with Cindy Pierce, Sherry Johnston, Larry Mills, Vicki Foster and

47. Cindy Pierce spoke with me by phone on June 22, 2013 and conveyed the following point of view regarding Ms. Mills' current situation. She states that Mr. Dexel wants to have things his way. That at Silverado they don't have Ms. Mills drink enough liquids or get her up enough, that Ms. Mills does not need hospice care. She is concerned that Ms. Mills speaks softly and won't bother anyone with her needs. She feels that Ms. Johnston takes good care of their mother. She states that Emeritus is cheaper. That Ms. Christopher is not qualified to be an administrator and that Mr. Dexel moved mother without notice or a meeting with family. She states that they moved Ms. Mills to a wing with people who have behavioral problems and she does not fit in. She complains there is no cable television in the room and they don't bring her out of the room enough. She asserts that all the staff at Silverado want Ms. Johnston to be there and are upset when she is restricted. She states that the room often smells of urine, that staff blames a diaper

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left in the room but that Ms. Mills is not kept clean. She believes Silverado employees have moved to Emeritus, and that other residents are having frequent UTIs at Silverado. She believes Ms. Mills is paying $10,000.00 per month for her care. She says Larry Mills does not care whether their mother lives or dies and described some of the family conflict leading up to the filing of guardianship for Ms. Mills. She believes Ms. Mills fell out of her chair because they do not place her in the chair correctly, and states they don't know how long she was on the floor before they found her because they are understaffed and were not watching her well. She believes a Christian person should be guardian, such as Ms. Johnston, who would bring her home and care for her at home. She complains that the guardian was having clothing purchased at the expense of the estate that Ms. Mills does not like and that they are paying to have her hair done but they are not actually doing her hair.

48. Sherry Johnston and I initially spoke on June 26, 2013, and the following statements represent her point of view of the important circumstances related to Ms. Mills' current situation. She discussed a long-standing dispute between herself, her sister and brother related to the handling of property owned by their parents at the death of their father which grew into a dispute about their mother's care. Ms. Mills suffered a stroke in 2007 at a time when the children where in conflict about her care and she was admitted to Park Manor for rehabilitation. Ms. Johnston reports that Ms. Mills suffered with severe leg cramps and was taking so much Vicodin that she could not hold her head up. She states that Larry Mills had her evaluated for guardianship purposes when she was heavily medicated. Ms. Johnston reports that while at Park Manor, she had bed sores. She states that one day she went to Park Manor and Ms. Mills' room was empty, she knew Mr. Dexel was looking for a place to move her, so she went to Silverado. Ms. Johnston reports that, upon arrival, Silverado would not allow family to visit. She states they wanted her moved, but not to Silverado because a memory unit was not suitable for a person who does not have dementia.

49. Nevertheless, Ms. Johnston reports that they got to know residents and families and ate, danced and had fun at Silverado. Ms. Johnston states that now Ms. Mills has no one to talk to. Ms. Johnston feels that in 2010 Ms. Mills was placed on Coumadin and transfused, and in 2012 she became ill but the nurse suggested hospice rather than hospital intervention. Ms. Johnston states that she took her mother to a clinic where she was diagnosed with a UTI and pneumonia. An emergency family meeting was held at Silverado upon Ms. Mills' being discharged from

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hospital to discuss the recommendation of hospice, which Ms. Johnston objected to because she did not have a terminal condition. She states that Ms. Mills pays $7,000 per month, has no behavioral problems, few medications, including only supplements, high blood pressure and anxiety medication, and reports that if they took care off her she would not get sick. She states that she felt that the doctors visited with Ms. Mills alone and harassed her to agree to palliative care instead of treatment.

50. By October, Ms. Johnston states her mother had lost 10 lbs and was declining and hospice was again recommended, and she believed that Mr. Dexel put her on hospice. She states that she and Ms. Pierce harassed Mr. Dexel, threatened to take his license and finally he backed off. She feels that the saline nebulizer treatments and juicing that she provided her mother caused her to recover. She admits Ms. Mills' skin is very fragile but believes the juicing helps it to heal. She states she requested a camera be put in place to document how often they were getting Ms. Mills up to see if the higher level of treatment they were paying for in this new room was being provided. Ms. Johnston asserts that in January only 1 to 2 caregivers were available and that all of Ms. Mills' friends were dying, sick or leaving Silverado. She looked at Emeritus, which she called a new, clean facility where some of Ms. Mills' friends had moved, was $2,000 cheaper, had more levels of care (skilled nursing) and more rehabilitation. Mr. Dexel raised concerns about the difficulty of a move and that she would lack friends. She claims that in April, Ms. Mills' roommate got a UTI or stone, was placed on hospice and died.

51. During the May 16th incident, Ms. Johnston reports she feared her mother's death so the following day she came back with a recorder, filed a complaint with Ms. Christopher then found Ms. Mills in her doorway looking "like crap" so she took her photo. She said that her mom would be leaving. Then Mr. Dexel called her and she recorded her half of the phone call, telling Mr. Dexel that she was being mistreated by not telling the family about the move, but Mr. Dexel refused to move her back. She reports she then found her mother in her room having her wound dressed and tried to take photographs, was stopped but states she was not violent and was being pleasant. She was advised police had been called so she left. She states she wrote a letter and explained why she was upset, but received no response. She says when Mr. Dexel arranged the 4:30 meeting on May 20th, she texted that she could not get there until 5:30, but says that she wanted her attorney and siblings to be at the meeting so she declined to come. She says Mr. Dexel called her to say they were waiting, but she did not return the call. She complains that she

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was unable to call mother, or that her mother was sleeping and would only say "hello," that the sitter was not showing up. Then she claims that the nurse called and advised that mother broke her leg while Ms. Johnston was out of town, and wanted Ms. Johnston to take her to the hospital. Ms. Johnston states she has never gone to Silverado with a gun. She claims that all treating doctors are linked to Silverado and that Dr. Coon-Nguyen is on the board of hospice and is a sleep disorder doctor, who is not appropriate for Ms. Mills' care needs. She has the opinion that Ms. Christopher is too young to be the director of Silverado, that her background is in marketing and she has no experience. Her version of the facts is that she was visiting her mother the previous Friday, having fun dancing with the other residents, wanting her mother to go to the party, and they kicked her out.

52. On July 8, 2013, I spoke with Larry Mills, Ms. Mills' son. He recounts the history leading up the application for guardianship, stating that his sisters resented him when their mother wanted to live near him and her siblings. He states that they sued him to have him disinherited then took possession of their mother and prohibited him and other family members from visiting. He feels that the current issues are motivated by the dispute among the siblings. He recounts Ms. Pierce discussing complaints about family members in front of Ms. Mills, then states that he hears from one of the aunts that Ms. Pierce is telling people he is the one bringing up the same upsetting subjects with Ms. Mills. He said that recently he told Mr. Dexel to terminate the sitters, that Silverado needed to provide the necessary care for Ms. Mills without them paying for additional care. He believes Mr. Dexel is the best thing that ever happened to his family. He states that they all loved Silverado initially, that the recent fall is a problem, but that sometimes things happen. He believes Ms. Mills needs care that can't be provided at home and that she never wanted to live in Cleveland with Ms. Johnston. He states that he has seen skin tears and breakdown, but that his skin also tears very easily and he believes it is genetic. He states that he has been told they are filing a suit against Silverado and does not believe there is any basis for such.

53. I was asked to talk to Mr. Bill Hester, attorney for Ms. Johnston and Ms. Pierce and met the sisters and their attorney in his office. He said he instructed his clients not to cause problems at Silverado. He believes Larry Mills is influencing Mr. Dexel in some way and is behind them not allowing Ms. Johnston to take her out of the facility. He states the move to Silverado was inappropriate because Ms. Mills does not have dementia like other residents there. The family is

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concerned about socialization because there is no one to talk to there. He reports that the family was not informed about the broken leg, that only Ms. Pierce was notified and he wonders why they want to keep Ms. Johnston out, and why they recommended hospice when she is not terminal.

54. The undersigned also spoke to Vicky Arney, Ms. Mills' sister who cared for Ms. Mills after the initial stroke. Ms. Arney states that she believes that Silverado has "been good to" Ms. Mills, that she is happy living there and that a new nursing home would not be good for her. She reports never having seen Ms. Mills unclean, without nails and hair done while at Silverado and comments that Ms. Mills had become quite attached to other residents and caregivers there. Regarding the disputes between the three children, she notes that Ms. Mills just wants her children to get along. She states that Ms. Mills is still quite alert, recognizes and enjoys visitors/family, and is generally happy. She believes her current guardian is in her best interest and is meeting her needs. She states that Ms. Mills still enjoys a few "puffs" on a cigarette when they take her outside and believes that she should be permitted to do so if she asks. In response to inquiry, Ms. Foster states that she and her brother also have very "thin skin" much like Ms. Mills, which bruises and tears very easily.

55. Faye Cooper reports that the disputes raised by Ms. Mills daughters are nonsense and is frustrated by their denial of Ms. Mills' medical condition and insistence that she not receive medication. She reports that Ms. Mills likes Silverado and always looks nice and appears to be happy. Ms. Cooper states that Ms. Mills often does not recall who has visited, but is able to remember family when they arrive and enjoys having visitors. She states that visits are made uncomfortable when Ms. Mills daughters are present because they talk over Ms. Mills and make it difficult to interact with her. Ms. Cooper confirms that fragile skin runs in the family and Ms. Mills' skin tears even more easily. She believes Ms. Mills should remain in place and that the recent disputes are primarily motivated by money.

56. Ms. Johnston's daughter, Betty Jo Johnston holds opinions similar to her mother's, recounting similar incidents and complaints during our conversation Friday, August 29, 2013. She states that while her mother's visitation was restricted, she would visit about once a week. That she has a family and business and typically visits less regularly as a result. She reports having last visited two weeks prior. About the most recent medications prescribed by Dr. Fisher, she states that she has noticed the Ms. Mills seems more disoriented since beginning the

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medication (the Exelon patch) and stares off in the distance. The medication had been started only one week prior, so it is unclear whether Betty Jo Johnston has personal knowledge of Ms. Mills' current state with regard to this medication. Since visitation by Ms. Johnston has again been restricted, the undersigned is aware that visits by Betty Jo Johnston have increased and complaints related to care are again being reported by her.

V. GUARDIAN AD LITEM'S RECOMMENDATIONS

57. Because the family advocated for a specific facility, Emeritus Kingwood, stating that it was less expensive, they had a higher patient to caregiver ratio and a skilled nursing unit on site which could address Ms. Mill's medical concerns more efficiently than Silverado, the undersigned toured the facility, as well as Atria nearby, in an attempt to evaluate facilities nearby as it was expressed that Kingwood is a convenient area for family to visit. While Emeritus is a new and clean facility with a skilled nursing unit, it was not found to be any great improvement on Silverado. It did not seem to have the same level of activities or a higher patient/caregiver ratio (I was advised that it is typically one caregiver per hall except during high traffic periods). Access to the skilled nursing unit was not permitted. Ms. Mills appears to receive the necessary level of care in a memory care environment which would appear to be more comfortable and "home-like" than a skilled nursing unit. Atria Kingwood does not have the level of care necessary for Ms. Mills at this time. Other facilities in the area, including the Terrace, have indicated that, due to the high level of care required by Ms. Mills, and the need for full assistance with feeding, they cannot accommodate her needs in either assisted living or a memory unit.

58. The desires of the family to allow Ms. Mills to reside in a more "home-like" environment, such as that provided by an assisted living center, rather than a skilled nursing unit seem appropriate if sufficient assistance is made available to assist her with ADLs. It now appears that it will be difficult to find a facility that maintains sufficient staff to accommodate all of Ms. Mills' needs without additional support. Because Ms. Mills seems to do better with a companion who can assist with feeding, proper hydration and general comfort care, I would recommend that Ms. Mills continue to utilize a third party caregiver during the day, as long as the guardian feels it to be appropriate and in her best interest. Silverado has informed us that they have made the decision that Ms. Mills will have to be moved to another facility as they can no longer contend with Ms. Johnston's behavior. They have asked that Ms. Mills be moved by September 20, 2013. In my opinion, this will be a difficult transition for Ms. Mills, one which

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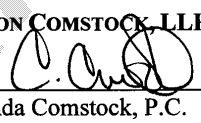
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unfortunately is being made based not on Ms. Mills' best interest so much as a result of the behavior of family members discussed above.

59. The undersigned recommends that a successor third party guardian be appointed as soon as possible, that an appropriate facility be identified by the new guardian for Ms. Mills immediately, taking into consideration as much as possible her medical, social and emotional needs. It would be helpful if the family could be in agreement with the placement, but ultimately the decision needs to be made independently by the guardian and based on the best interest, needs and safety of Ms. Mills and not the subjective desires of family members. Family members must be instructed that appropriate behavior will be expected at all times and that they are not to discuss conflicts and complaints with or in the presence of Ms. Mills, or visitation will be restricted. It is also recommended that the family be instructed that the Guardian has full authority to make medical decisions for Ms. Mills based upon medical recommendations and advice and without the notice and consent of family members.

Respectfully submitted,

BENSON COMSTOCK, LLP

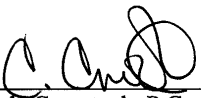


Clarinda Comstock, P.C.
TBN: 00790492
One Riverway, Suite 2300
Houston, Texas 77056
Telephone: 713-961-8011
Facsimile No.: 713-961-8022
GUARDIAN AD LITEM

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent according to the Texas Rules of Civil Procedure to the following parties and counsel of record on this the 12th day of September, 2013, as follows:

David R. Dexel
P. O. Box 66790
Houston, Texas 77266
Via Facsimile: 713-527-9379



Clarinda Comstock, P.C.

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Willie Mills, IP

060765

PROBATE COURT 4

DOCTOR'S MENTAL STATUS EXAMINATION

DATE: 6/10/2008

PHYSICIAN'S NAMES: B. Rubashkin

PHYSICIAN'S ADDRESS: _____

TELEPHONE NUMBER: _____

FILED
2008 JUN 23 PM 12:20
HARRIS COUNTY CLERK

HON. William Mc Culloch
JUDGE, PROBATE COURT NO. 4
1115 CONGRESS, 7th FLOOR
HOUSTON, TX 77002

RE: Cause No. 380,624, Willie Jo Mills (Name of Patient)

Dear Judge Mc Culloch:

I am a physician currently licensed in the State of Texas. I have been the doctor for Willie Mills ("Proposed Ward") since (date) 2/4/08. I examined Proposed Ward on (date) 6.9.08.

For the purpose of this examination, I am aware that the following definition applies: **An "Incapacitated Person" is an adult individual who, because of a physical or mental condition is substantially unable to provide food, clothing or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own affairs."**

Based upon the examination and my observations, it is my opinion that the Proposed Ward's incapacity is described in my answers to the following questions:

1. What is the general nature and degree of incapacity?
   vascular dementia with depression
2. What is the patient's medical history as it is related to the incapacity?
   deterioration of the brain blood vessels causing strokes
3. What is the prognosis, including the estimated severity, of the incapacity?
   progressive illness

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Capable	Incapable		
_____	_____	t.	other:

1._____

2._____

THEREFORE, it is my opinion that the Proposed Ward is incapacitated as stated in this letter and that the Court should consider the appointment of a guardian.

FURTHERMORE, (answer YES to one of the following):

_____ It is my opinion that the Proposed Ward is partially incapacitated.

yes It is my opinion that the Proposed Ward is totally without capacity.

_____ It is my opinion that the Proposed Ward has total capacity.

954-53-1981

10. I believe that the Court should also be aware of the following additional information, if any, which concerns the Proposed Ward, and which is not included above, but which may be of interest to the Court.

Sincerely,

_____, M.D.

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Capable	Incapable		
____	✓	e.	to apply for or consent to governmental services.
____	✓	f.	to apply for and receive funds from governmental sources.
____	✓	g.	to enroll in public or private residential care facilities.
____	✓	h.	to make employment decisions.
____	✓	i.	to make decisions related to military services.
____	✓	j.	to enter into insurance contracts of every nature.
____	✓	k.	to vote.
____	✓	l.	to operate a motor vehicle.
____	✓	m.	to participate in the selection of residential placement.
____	✓	n.	to handle funds of $50.00 or less.
____	✓	o.	to hire an attorney.

Capable	Incapable		
____	✓	p.	other:

1. to marry

2. ____

2881-53-4956

MATTERS RELATED TO THE PROPOSED WARD'S PERSON

Capable	Incapable		
____	✓	q.	to apply for psychological tests and evaluations.
____	✓	r.	to consent to medical and dental treatment and tests.
____	✓	s.	to consent to disclosure of psychological and medical records.

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954-553-1983

4. How and in what manner does the patient's physical or mental health effect ability to make or communicate responsible decisions?
Totally unable to make reasonable decisions

5. Is the patient on any medications which effect demeanor or ability to participate in court proceedings? Is so, what medications are patient on and how is his/her demeanor or ability to participate in court proceedings affected?
no

6. If the underlying diagnosis of the incapacity is that of "senility," please describe the precise physical and mental condition underlying the diagnosis of senility.
no

7. Is mental retardation the basis of the Proposed Ward's incapacity?
no

8. Are you certified by the Department of Mental Health/Mental Retardation to perform said exam or has the Proposed Ward been examined within the previous six (6) months according to the Rules adopted by the Department of Mental Health/Mental Retardation?

9. It is my opinion that the patient ("Proposed Ward") is incapable of making a decision concerning the following as indicated by a mark before the appropriate letter:

MATTERS RELATED TO THE WARD'S PROPERTY

Capable	Incapable		
____	✓	a.	to handle a bank account.
____	✓	b.	to contract and incur obligations.
____	✓	c.	to collect and file suit on debts, rentals, wages and other claims due Proposed Ward.
____	✓	d.	to pay, compromise and defend claims against him/herself.

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PHYSICIAN'S AFFIDAVIT
SUPPORTING MENTAL STATUS REPORT

STATE OF TEXAS §

COUNTY OF HARRIS §

On this day, Boris Rubashkin MD personally appeared before me, the undersigned Notary Public, and after I administered an oath to him/her, upon his/her oath, stated as follows:

"I have personally examined Willie Mills and completed the mental status examination form. The facts in it are within my personal knowledge and are true and correct."

B Rubashkin MD
Signature

B. Rubashkin MD
Printed Name

SWORN TO AND SUBSCRIBED before me by B Rubashkin MD on the 10 day of June, 2008

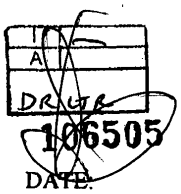
Charlton P. Tulud 6/10/08
NOTARY PUBLIC, STATE OF TEXAS

CHARLTON P. TULUD
Notary Public, State of Texas
My Commission Expires
December 01, 2010

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

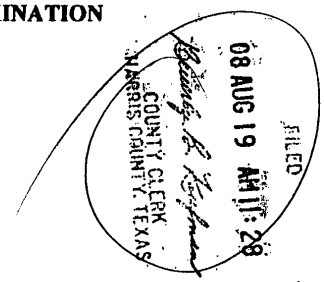
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PROBATE COURT 4

DOCTOR'S MENTAL STATUS EXAMINATION



DATE: 8/11/08
PHYSICIAN'S NAME: Mark E. Kunik, MD, MPH
PHYSICIAN'S ADDRESS: 5552 Huisache
Bellaire, TX 77401
TELEPHONE NUMBER: 713-662-2480

Hon. William C. McCulloch
Judge, Probate Court No. 4
201 Caroline, 7th Floor
Houston TX, 77002



RE: CAUSE NO. 380;624: IN THE GUARDIANSHIP OF WILLIE JO MILLS, IN THE PROBATE COURT NO. FOUR OF HARRIS COUNTY, TEXAS

Dear Judge McCulloch:

I am a physician currently licensed in the State of Texas, Board Certified in Psychiatry and Geriatric Psychiatry. I examined Willie Jo Mills on August 10, 2008. I examined Mrs. Mills at 19424 McKay Drive in Humble, Texas. I advised her that I was examining her for the purpose of determining whether she needed a guardian. I further advised her that the information that she revealed would not be confidential and would be used in the guardianship hearings. Mrs. Mills was cooperative and pleasant and I believe that I was able to obtain an accurate assessment.

For the purpose of this examination, I am aware that the following definition applies: **An "Incapacitated Person" is "an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs."**

For this assessment, in addition to examining Mrs. Mills, I considered the following:

Nursing Home Records at Manor Park

Based upon my examination, my observations, and the above discussions, it is my opinion that the Mrs. Mills's incapacity is described in my answers to the following questions:

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1. What is the general nature and degree of the incapacity?
ANSWER: Mrs. Mills is an 80 year old woman with a history of stroke, emphysema, heart disease, vascular disease, and hypertension. She is in a nursing home and has required near total assistance in her daily care since October 2007 when she had a stroke. Mrs. Mills has moderate deficits in understanding and expressing language, short- and long-term memory, attention, concentration, insight, judgment, and problem-solving. She had difficulty coming up with the name of her children even with several attempts. When asked about the names of children, she repeatedly provided the names of her siblings. This may have been due to her problems understanding language. She was not oriented to time or place, except that she knew she was in Humble, Texas. Mrs. Mills could not describe her assets or monthly expenses/income. She has very little perception of her medical or psychological problems.

Mrs. Mills suffers from vascular dementia. In my opinion, she is totally incapacitated.

2. What is the patient's medical history as it is related to the incapacity?
ANSWER: Mrs. Mills's heart and vascular disease and hypertension likely play a role in her development of dementia.

3. What is the prognosis, including the estimated severity, of the incapacity?
ANSWER: Mrs. Mills has a vascular dementia which will likely progress with time. Given the diagnosis of dementia and her other chronic medical illnesses, her prognosis is poor.

4. How and in what manner does the patient's physical or mental health affect her ability to make or communicate responsible decisions?
ANSWER: Mrs. Mills has problems with memory, language, problem-solving, insight, and judgment which interfere with her ability to communicate responsible decisions.

5. Is the patient on any medications, which effect demeanor or ability to participate in court proceeding? If so, what medications are patient on and how is his/her demeanor or ability to participate in court proceedings affected?
ANSWER: No

6. If the underlying diagnosis of the incapacity is that of "senility", please describe the precise physical and mental condition underlying the diagnosis of senility.
ANSWER: Mrs. Mills has vascular dementia.

7. Is mental retardation the basis of the Proposed Ward's incapacity?
ANSWER: No.

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8. It is my opinion that the Mrs. Mills is incapable of making a decision concerning the following as indicated by a mark before the appropriate letter:

Capable	Incapable		
_____	X	a.	to handle a bank account.
_____	X	b.	to contract and incur obligations.
_____	X	c.	to collect and file suit on debts, rentals, wages and other claims due Proposed Ward.
_____	X	d.	to pay, compromise and defend claims against him/herself.
_____	X	e.	to apply for or consent to governmental services.
_____	X	f.	to apply for and receive funds from governmental sources.
_____	X	g.	to enroll in public or private residential care facilities.
_____	X	h.	to make employment decisions
_____	X	i.	to make decisions related to military service.
_____	X	j.	to enter into insurance contracts of every nature.
_____	X	k.	to vote.
_____	X	l.	to operate a motor vehicle
_____	X	m.	to participate in the selection of residential placement.
_____	X	n.	to handle funds of $50.00 or less.
_____	X	o.	to hire an attorney.

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MATTERS RELATED TO THE WARD'S PERSON

Capable	Incapable		
_____	X	q.	to apply for psychological and psychiatric tests and evaluation.
_____	X	r.	to consent to medical and dental treatment and testing.
_____	X	s.	to consent to disclosure of psychological and medical records.

THEREFORE, it is my opinion that Mrs. Mills is totally incapacitated as stated in this letter and that the Court should assign a guardian.

FURTHERMORE, (answer YES to one of the following):

_____ It is my opinion that the Proposed Ward is partially incapacitated.

X It is my opinion that the Proposed Ward is totally without capacity.

9. I believe that the Court should also be aware of the following additional information, if any, which concerns the Ward and which is not included above, but which may be of interest to the Court:
NA

Sincerely,

Mark E. Kunik, MD, MPH

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PHYSICIAN'S AFFIDAVIT
SUPPORTING MENTAL STATUS EXAM

STATE OF TEXAS

COUNTY OF HARRIS

On this day, Mark E. Kunik, M.D., M.P.H. personally appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, stated as follows:

"I have personally examined Willie Jo Mills and completed the enclosed Doctor's Letter. The facts in it are within my personal knowledge and are true and correct."

Mark E. Kunik, M.D., M.P.H

SWORN TO and SUBSCRIBED before me by MARK E. KUNIK, M.D. on the 11th Day of August, 2008.

JENNIFER J. TAYLOR
Notary Public, State of Texas
My Commission Expires
May 11, 2011

Notary Public In and For the State of Texas

955-52-2905

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PROBATE COURT 4

MARK S. MOELLER, M.D.

6300 WEST LOOP SOUTH, SUITE 680
BELLAIRE, TEXAS 77401
PHONE: (713) 661-4670
FAX: (713) 661-4672

CONFIDENTIAL

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County Clerk
HARRIS COUNTY, TEXAS

Assessment of Capacity

Evaluee: Ms. Willie Jo Mills
DOB: 11/27/1927
Date Evaluated: 3/11/09
Date of Report: 3/20/09

Cause 380624

Reason for Evaluation

This evaluation was performed to determine Ms. Mill's competency to make legal, financial and medical decisions for herself. I was asked to perform this evaluation by Mr. David Dexel, her temporary guardian.

Statement of Non-Confidentiality and Non-Treatment

I explained to Ms. Mills that what she told me was not confidential. I told her that I would be writing a report which would be used by the judge in his determination of her competency. I also explained that I would not be treating her or acting as her physician in any way. She understood and agreed to proceed.

Collateral Sources of Information

This case was discussed with "Kim", her care companion and "Andrea", her provider.

Pertinent History

Ms. Mills is an 81-year-old widowed lady. She is living at Silverado Senior Living-Kingwood. She was in fair health until 1999 when she sustained a stroke which left her with a right-sided paralysis. She quit working at that time but remained quite independent. In 2007, she had a 2nd stroke. She was left with severe motor deficits and has required almost total assistance since then. She stated that her sister moved in with her at that time and her son began managing her affairs.

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In December of 2008, an attorney-ad-litem began managing her affairs. I was asked to render opinions about her mental capacity.

Ms. Mills was brought to the evaluation by "Kim", her care companion. Ms. Mills was pleasant and cooperative. In spite of short-term memory deficits, she answered questions about her education, work history and estate without much help from Kim. She said her income consists of Social Security (about $1000 a month) and oil royalties (about $670 a month). She told me her estate consists of a 3 year old home with furniture, a station wagon and a savings account (about $1 million). She was able to explain to me what a will is and she was adamant that she wants her assets to be divided equally among her 3 children.

Mental Status Examination

Ms. Mills is wheelchair bound. She was accompanied by her care companion. Her speech was low and slow and she attempted to answer each of my questions. She did not appear grossly depressed or anxious. There was no evidence of any hallucinations or delusions. Her short-term memory was poor and she recalled one of three objects in 5 minutes. Although she watches "a lot" of TV, she was unable to tell me of any major current events and did not know who the President of the U.S. is. She was able to give me reasonable estimates as to the value of her home and her bills. Her knowledge and judgment about her medical conditions was poor. There was no evidence of any suicidal or homicidal ideation.

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Opinions

In my medical opinion, Ms. Mills is partially without capacity. I have filled out a doctor's form detailing what her capacities are and that is part of my report.

Opinions rendered herein are subject to change should further data be made available or should Ms. Mills' medical condition change.

Sincerely,

Mark S. Moeller, M.D.
Diplomate, American Board of Psychiatry and Neurology
Added qualifications in Forensic Psychiatry
Added qualifications in Geriatric Psychiatry
Added qualifications in Addiction Psychiatry

Attachment: Doctor's Form Letter

09162013 15:29:P0106

Methodist
Neurological Institute

Stanley Fisher, M.D.

6560 Fannin St., ST902
Houston, Texas 77030
Tel: (713) 441-3337
Fax: (713) 790-2004
sfisher@tmh.tmc.edu

MILLS, WILLIE
08/23/13

NEW PATIENT VISIT

Ms. Mills is an 85-year-old female with history of progressive cognitive decline complicated by stroke about seven years ago, history of atrial fibrillation, hypertension, and COPD, who has been a resident of Silverado for the last five years. She is brought to me because of question of her neurological status and her cognitive abilities. I have previously observed Ms. Mills in the Silverado Facility with activities of daily living and interactions, but this is my first official evaluation as her treating physician. According to the limited history that I have she has been declining for more than seven years. She spent five of those in Silverado and according to the caregivers who know her there was a slow decline in her function to the point that currently she is dependent for all ADLs, incontinent of urine and bowel and unable to communicate those needs, but still able to interact with caregivers, sometimes shows appropriate emotions, recognizes her children and visitors who come frequently and is able to have some short, but quality interactions with the staff. The stroke left her with right hemiparesis, but she does not have aphasia. She is not on any medications for her dementia and she also is not on any antiplatelet medications for unclear reason.

PAST MEDICAL HISTORY: As I mentioned includes stroke with residual right-sided weakness, COPD, A.fib, hypertension, osteoarthritis and dementia of unclear etiology.

MEDICATIONS: Includes escitalopram 10 mg, ferrous sulphate, hydralazine, tramadol as needed, multiple vitamins, and as needed pain medication.

SOCIAL HISTORY: She apparently has three children, two daughters and one son and she has a legal guardian. She apparently was a 40-pack year smoker in the past and now according to caregiver she does not ask her cigarettes, but her daughter gives her sometimes electronic cigarette without patient asking. The rest of the social and family history is not available to me.

PHYSICAL EXAMINATION: She is an elderly female, in a wheelchair. She is awake, appears to be alert. Her heart rate is 84 and regular. Blood pressure is 146/67. She stands 5 feet 4 inches tall and weighs 115 pounds, but does not appear to be cachectic. She has no carotid bruits. I am unable to do optic fundi evaluation. On the Mini-Mental State Examination, she scored 5/30. She was able to name objects and have some awareness of what City and State she was. She was also aware the year of her birth, but not her age. She thought that she is living at home with her daughter even though she lives in Silverado for the last five years.

Continued.....

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[redacted], 2016

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She thought that her husband is alive and she could not tell me how many daughters and sons she has, but she was able to follow some simple commands and answer some simple questions yes or no. She has right hemiparesis with limited movement in both upper and lower extremities. She has some severe arthritic changes in the left upper extremity with limited range of motion, ulnar deviation, and moderately severe apraxia in the left hand. She has about 4/5 weakness on the left side. She has no expressive or receptive aphasia. She has no dysarthria even though she has hoarse voice. She has hypersalivation when she speaks. Her pupils are equal and reactive to light. Her extraocular movement appears to be intact and there appears to be no problem with visual fields and exam however is limited due to cooperation. There seems to be no facial weakness or asymmetry. The sensory exam is limited because of her cooperation. The patient is unable to get up or ambulate. The patient is currently wheelchair bound and has a boot on her right foot because of fracture.

ASSESSMENT AND PLAN: This is an 85-year-old lady with reported history of cognitive and functional decline over at least a seven-year period, but history is sketchy and not completely available to me.
At this point, she clearly has significant cognitive impairment in the range of severe dementia. She does not have aphasia; therefore, the specific left hemispheric stroke is probably not completely responsible for her deterioration; however, I am unable at this time to give exact diagnosis.
I suspect she has a combination of Alzheimer's dementia and vascular dementia; however, without imaging and without a detailed history that is difficult to determine.
The patient is completely dependent on her ADLs; however still capable of certain interaction; therefore, I decided to initiate Exelon patch. Because of her vascular risk factors of hypertension, atrial fibrillation and others I decided to put her on enteric coated aspirin. She is not a candidate for anticoagulation because of significant cutaneous hematomas that she has even without medications. I strongly encouraged the staff not to allow her to smoke even electronic cigarettes because that can increase blood pressure and cause cardiovascular events, especially since patient does not ask for it. I believe that because of patient's cognitive status she should be taken care in a facility that is experienced in patients with cognitive impairment. She seems to be well cared currently while at Silverado. I encouraged the caregivers to continue to engage her, talk to her daily, interact with her, and encourage participating in low level functional events. The patient unfortunately is incontinent of bowel and bladder and unable to tell when she goes; therefore, I encouraged the caregivers to continue bowel and bladder protocol to maintain skin integrity.

Stanley Fisher, M.D.
Co-Director of Movement Disorders And Neurorehabilitation Center
Methodist Neurological Institute
Associate Professor of Neurology
Weill Medical College
Cornell University

SF/aqk/dsh 0046
DT: 08/24/13

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May 26, 2013

DAVID R DEXEL

2600 SOUTHWEST FREEWAY SUITE 1080
HOUSTON, TEXAS 77098
Phone 713-527-9377
Fax 713-527-9379

David Dexel,

Concerning mother's recent move to the East side of the facility at Silverado, I would request the following updates on mom's (Willie Jo Mills) previous 6 months history since the Family meeting in March. 2013 was rescheduled to an earlier time without notice to the family. Included in the request are:

1. A copy of the report (doctors notes) and minutes of the family meeting App March 14 at 2PM
2. The decision to move mom from the west side (#4 Hickory) of Silverado Senior Living where she has resided since 2009 (4years) to the east side (#10 Hickory) was decided by whom, when, why and who' made the decision to not inform Willie Jo Mills children ahead of time so that proper preparation for both mom and family for a smooth transition would be made?
3. Why all of a sudden was I told I could not take pictures of mom after years of freedom to take and share with you via-e-mail, family, friends along with members of staff?
4. Silverado staff has told that no one but you (David Dexel) would be allowed to take mom out the front door or leave the premises thus eliminating mom's family from taking her off premises for a meal, shopping or for family events.
5. I am requesting you to make arrangements for me and mom to be able to have a mother-daughter relationship outside Silverado Senior Living property since Silverado has banned me from their premises where mom resides
6. To prevent mistreatment or isolation inside mom's room, Willie Jo Mills's children request that a monitoring camera or "DROP CAM", (a neutral or outside encrypted. password protected monitoring service) be installed inside her room to monitor her with another source for Willie Jo. Mills children to be able to view.
7. A current updated photo be taken of mom showing her arms, legs and current bandage wound on her right leg exposing the wound, including her current weight and updates bi weekly for proof of physical stability
8. That mom's fluids intake be documented daily along with her food

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9. Mom to be tested to make sure she does not have a UTI infection currently

10. That moms lungs to be x-rayed to make sure that no Pneumonia is present at this time

11. Moms (Willie Jo Mills) electronic cigarette, that you had removed from her wheel chair back pack and put behind the nurses desk for safe keeping for moms personal use, is missing, to be replaced

12. Notice be given to moms (Willie Jo Mills) children, any medical test that are being performed presently or to be performed in the future on her such as speech test, swallow test, mental evaluations, Hospice or palliative evaluations etc

13. A copy of moms last 6 months medication

I am sending this request via: E-MAIL, FAX (713-527-9379).

I am respectfully waiting for a prompt response from you concerning these important matters.

Thank you,

Sherry Johnston

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09/20/2013 15:25:31 6

WILLIAM R. HESTER, JR.
Attorney at Law
363 No. Houston Pkwy
Suite 1100/115
Houston, Texas 77060
(281)-586-7999 whester1969@gmail.com Fax (281)586-7997

August 14, 2013

David R. Dexel
Attorney at Law
2600 Southwest Freeway
Suite1080
Houston, Texas 77098

RE: Guardianship of Willie Jo Mills

Mr. Dexel:

On behalf of my clients, Sherry Johnston and Cindy Pierce, I am advising you that they need to have their mother, Ms Mills, relocated to another facility.

To begin with, as previously stated, Silverado is primarily a Senior Living Dementia Center. Ms Miller does not have dementia and is unable to communicate with the residence of the Center. She is also aware of this situation, which upsets her.

There is constantly an effort to keep Sherry from visiting with her mother. Silverado continues to create false claims concerning Sherry's behavior in an effort to keep her away from Silverado and her mother. The family, including Sherry, has the right to see and be with Ms Miller without interference from Silverado. They refuse to provide information about Ms Miller's illnesses and injuries, such as when she falls from her wheel chair and breaks her ankle.

Sherry's primary concern is her mother's best interest; and it appears that everyone else involved in Ms Miller's care continues to make every effort to keep Sherry from following up with her concerns.

There are several facilities in the same area that are more suited for Ms Miller's condition, at a more reasonable cost, that should be considered for her care. The costs at Silverado are unreasonable. Not only is she paying $7,000 per month for minimal care, she is paying an additional fee for a care giver that Silverado should be paying, since they are shorthanded and unable to provide the proper care for Ms Miller. Enough staff is not available to safely assist her with showers, along with moving her up and down.

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For these reasons, and others, Ms Miller's safety is in question and she is not getting the care she is paying for. The only person concerned about this situation is Sherry. Therefore, if this move is not taken within 2 weeks, any and all legal proceedings will be taken to have this done.

Please get in touch with me so that this matter can be resolved.

Thank you,

William R. Hester, Jr.

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RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

PROBATE COURT 4

DATE ENTRY
PICK UP THIS DATE

CAUSE NO. 380624		
IN THE GUARDIANSHIP OF	§	**IN THE ~~DISTRICT~~ COUNTY COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER

WC no post 12/16/13 no service per Pro-se

COMES NOW, CINDY PIERCE ("APPLICANT") and files this EMERGENCY APPLIATION FOR TEMPORARY RESTRAINING ORDER AGAINST GINGER LOTT, the current guardian of the person of WILLIE JO MILLS ("MILLS"), an incapacitated person. Contemporaneously herewith, PIERCE files a Motion to Remove current guardian of WILLIE JO MILLS' person, GINGER LOTT, for derelect of duty and gross negligence as well as multiple violations of the minimum standards of care required of guardians, which has placed WILLIE JO MILLS' health in danger to an outrageous and unacceptable degree. **This is a true emergency in that, the Court's failure to act could very well result in the imminent death of WILLIE JO MILLS—that may otherwise be averted by critical and timely intervention of her daughters. Both the acts and omissions of Ginger Lott have arisen to a gross negligence and/or reckless degree, mandating that she be restrained from further acts and omissions and the family be permitted to access their mother and help her regain stability.** ***See Affidavits of Cindy Pierce and Sherry Johnston, attesting to all facts alleged herein.***

WILLIE JO MILLS was just released from the hospital and her health is on an urgent, ***steep decline*** **in sharp contrast to the health she enjoyed when her daughter, Sherry Johnston was permitted to visit her and care for her daily. CINDY PIERCE visited her mother Wednesday, the 4th of December and was ALARMED at her mother's appearance and LOTT'S continued exhibition of gross neglect and reckless disregard of her mother's needs.** *See Affidavit of Cindy*

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Pierce with true and correct copies of Photographs of Willie Jo Mills. **MILLS suffers deep bedsores and a crooked, broken foot that was never adequately treated after being broken at Silverado. SHE IS NOT EATING, HARDLY DRINKING, AND HER SKIN IS THIN "SARAN WRAP" APPEARING SKIN COVERED WITH DARK SPOTTING AND TEARS. She is extremely sick and needs her daughters to provide the care they have provided—when not thwarted by GINGER LOTT. If the Court fails to act, WILLIE JO MILLS may die. This risk is elevated and CINDY PIERCE requests an entry of the ATTACHED EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER ("TRO"). Additionally, PIERCE asks the Court to grant HER MOTION TO REMOVE GINGER LOTT AS GUARDIAN OF THER PERSON OF WILLIE JO MILLS and EMERGENCY MOTION FOR TEMPORARY GUARDIANSHIP OF THE PERSON OF WILLIE JO MILLS. In support of this Emergency application for Temporary Guardianship, Applicant will present shocking evidence, recordings, and photographs of Mrs. Mills to the Court. PIERCE alleges the following:**

III. JURISDICTION & VENUE

1. Jurisdiction lies in the Harris County, Texas, Statutory Probate Court. Tex. Prob. Code § 607D. The Harris County Statutory Probate Court has exclusive jurisdiction over guardianship WILLIE JO MILLS, as she is subject to a pending guardianship in Harris County and has at all times resided in Harris County, Texas since the guardianship began. Venue is appropriate in Harris County because the ward resides in Harris County, Texas with the Applicant at the time the Guardianship is being filed.

IV. *SUMMARY OF FACTS & RELIEF REQUESTED*

2. Pierce and Johnston had spent more than $40,000 in attorneys' fees to preserve their mother's estate and ensure she is well cared-for, in addition to thousands of dollars on a van to transport their mom's wheelchair and other items for her care. SHERRY JOHNSTON AND CINDY PIERCE have visited

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their mother almost daily, bringing nutritional supplementation including but not limited to fresh squeezed juices, coconut oil, fresh made vegetable juice, as well as nebulizer treatments with minerals for her chronic obstructive lung disease ("COPD"). JOHNSTON purchased a wheel chair and recliner for her mother when DEXEL neglected to do so.

3. JOHNSTON AND PIERCE have spent countless nights camped out in hospital rooms with their mother to ensure her needs were met—in anticipation that DAVID DEXEL AND GINGER LOTT would do nothing, their usual practice. MILLS has been hospitalized twice and taken for emergency treatment in JUNE when she suffered a broken foot caused by SILVERADO'S neglect. t.[1]. However intolerable their experience with DEXEL AND LOTT has been, it came nothing near the outrage CINDY PIERCE felt on December 4, 2013 when she visited her mother after being released from the hospital for pneumonia.. See Affidavit of Cindy Pierce.

4. Pierce submits true and correct copies of the photographs she took that night of her mother (under the care of GINGER LOTT nearly two weeks after JOHNSTON'S visitation was revoked by LOTT) for the Court's review. Id. **A picture truly speaks a thousand words, revealing how very ill WILLIE JO MILLS is right now. She is not eating, hardly drinking, and appears sedated (possibly the Exelon patch given to her) to the point that she does not attempt to eat or drink. Her broken foot was not set by GINGER LOTT AND DAVID DEXEL and remains twisted and deformed. Her legs are dark, spotted with thin skin to the point of translucent and tearing, like saran wrap. PIERCE AND JOHNSTON fear for their mother's life is this Court does not grant this Emergency Application for Temporary Restraining Order ("TRO"), Remove Ginger Lott as guardian of the person immediately, and appoint CINDY PIERCE as guardian of WILLIE JO MILLS' person. At the rate GINGER LOTT is going, WILLIE JO**

[1] Neither DEXEL nor LOTT visited the ward in the hospital or bothered to call and check on her progress

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Case 4:16-cv-03215 Document 10-13 Filed in TXSD on 12/19/16 Page 4 of 26

MILLS will be deceased before hearings can be held on PIERCE'S Application for Permanent Guardianship of MILLS' person and estate. PIERCE prays this Court acts now!

V. SUMMARY OF LOTT'S GROSS NEGLECT & RECKLESSNESS[2]

5. Throughout the time GINGER LOTT fulfilled DEXEL'S responsibilities as guardian to MILLS to now, LOTT has been grossly negligent and reckless concerning MILLS' care. Her acts and omissions include:

   a. October 2012 Hospitalization: Failing to ensure that Willie Jo Mills was hospitalized for pneumonia and a severe urinary tract infection in October of 2012:

   b. Failing to ensure that proper patient-caregiver ratios were complied with in violation of patient care plans

   c. Failing to do anything to help WILLIE JO MILLS regain her health throughout the fall of 2013, leaving all responsibility on JOHNSTON AND PIERCE to do their jobs for them;

   d. Failing to promptly move MILLS when SILVERADO experienced a sharp decline in quality of care

   e. Recklessly and Maliciously blocking JOHNSTON from all contact with her mother in retaliation for "rocking the boat" by asking too many questions and interrogating LOTT and caregivers concerning her mother, when JOHNSTON was providing substantive care not given to MILLS daily. This resulted in a sharp decline in MILLS' health, leaving her as ill as her daughters have ever seen her on December 4, 2013;

   f. Maliciously blocking the family from access to any and all information or records about their mother's dire health decline to cover their mistakes

[2] Though Lott was FORMALLY appointed as guardian of the person of WILLIE JO MILLS September 17, 2013, she has served as DAVID DEXEL'S representative and/or alter ego for the past several years, acting in his place. For this reason, the acts and omissions delineated should be charged to her for both time periods. As a licensed guardian, she is held to certain minimum standards that she has not met.

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2016-03220; 14th Probate Court; Harris County, Texas

g. Recklessly failing to have MILLS treated by a Cardiologist or Pulmonologist throughout the guardianship up to now, when MILLS is a heart and lung patient who is in a dementia facility due to alleged stroke.

h. Recklessly failing to ensure that MILLS leg and foot were properly set in a cast or stabilizing brace and Doctors' orders followed so that the brace remained in place 24 hours per day and not removed to allow her foot to dangle;

i. Recklessly permitting MILLS to acquire bed sores 1/4 " deep or more and doing nothing to get rid of the sores, such as purchasing a gel overlay mattress and/or air mattress through Medicare (rendering the products almost free). MILLS had a gel overlay mattress at Silverado and after it disappeared, DEXEL AND LOTT wholly failed to replace it or find a substitute. JOHNSTON AND PIERCE repeatedly asked for an air mattress and/or gel overlay to be purchased—to no avail. Rather than purchase appropriate bedding for MILLS, LOTT has permitted her to become progressively more ill due to bed sores, doing nothing. On December 4, 2013, Pierce refused the inadequate bed LOTT brought for her mother. See photograph produced of same bed already in MILLS' room.

j. Not ensuring that MILLS had sufficient fruit and vegetable intake to keep her skin from not breaking down and sloughing off

k. Failing to act with any urgency as the 130 lb. MILLS weight plummeted to 107 lbs and she stopped eating or taking sufficient fluids.

l. Failing to ensure that MILLS saw a Neurologist since the beginning of the guardianship, other than when required for D*EXEL'S annual report or the initial evaluations for the guardianship.*

m. Recklessly continuing the Exelon patch, which causes MILLS to act drugged, sluggish and not eat or drink sufficiently;

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n. Intentionally pushing her responsibilities off on PIERCE AND JOHNSTON or simply not doing them;

o. Intentionally neglecting to look into persistent notifications that upon arrival of Cheryl (Nurse) or Johnston, MILLS was soaked in urine with evidence she had not been changed in many hours;

p. Committing a Class B Misdemeanor by failing to report the neglect to Adult Protective Services;

q. Refusing to request a lift be purchased to help lift MILLS in and out of bed even after a staff member fell on her mother and knocked her down and MILLS suffered a broken foot due to inadequate staffing.

r. Recklessly failing to prevent MILLS from acquiring bedsores by ensuring she was moved frequently and had appropriate bedding;

s. Intentionally and maliciously suppressing CRITICAL information, records, physician's statements, while prohibiting photographs, recordings, or taping of any meeting or matter involving DEXEL, LOTT OR SILVERADO, prohibiting JOHNSTON from talking to other families about their neglect and punishing her routinely with malicious bans that harm MILLS by taking away the one person there feeding her and nursing her to health day in and day out;

V. TIMELINE ENCOMPASSING

LOTT'S RECKLESSNESS AND GROSS NEGLECT

6. ***OCTOBER 2012***: Willie Jo Mills ("MILLS") contracted a urinary tract infection and pneumonia in October of 2012, mandating that she be hospitalized. Leslie Love, her nurse at Silverado, refused to take Willie Jo to the hospital **in favor of hospice** over the vehement objections of the family. MILLS was not terminal, rendering hospice **inappropriate**. MILLS developed the UTI and pneumonia from

20161219 045202 4 of 26

sitting in bed 20 hours per day in wet diapers that were found double wrapped (illegal). *Because DEXEL AND LOTT did nothing while MILLS became sicker*, SHERRY JOHNSTON had to take her mother to the hospital and admit her. Doctors confirmed SHERRY JOHNSTON'S suspicions, that her mother had a UTI and pneumonia. Consistent with DEXEL and LOTT'S usual neglect, they did not visit or call to check on WILLIE JO MILLS the entire eight days she was hospitalized. Shortly after this incident, Leslie Love was transferred out of SILVERADO KINGWOOD TO SILVERADO CYPRESSWOOD.

7. ***Fall of 2012:*** The prior Administrator, Chris, worked through issues with the family and dealt swiftly to diffuse problems, which is largely the reason PIERCE AND JOHNSTON did not demand their mother be moved sooner. In late 2012, Chris was transferred to Cypresswood and Megan Christopher was transferred from another Silverado facility to its Kingwood location to serve as administrator. Megan Christopher's specialty is *marketing—and profit has been her consistent focus, at the cost of good patient care and proper staffing ratios.* Since Christopher began running the facility, she boasted about the profit she made for Silverado—omitting the fact that chronic understaffing violating care plans was one primary cause for profits. Other questionable profit making schemes included making families pay for extra caregivers beyond the $7000.00 per month (rather than Silverado be forced to adequately staff) and bringing in hospice to care for residents who fell ill—an improper use.

8. ***November – December of 2012:*** SHERRY JOHNSTON and/or CINDY PIERCE visited MILLS almost daily, bringing juices (fresh fruits and vegetables pureed) and other nutritional supplementation and **spoon fed her until MILLS regained her strength and WAS ABLE TO FEED HERSELF.** Her skin was so thin it tore before JOHNSTON began juicing her mom, but by the end of two weeks of juicing, the collagen had returned as well as healthy looking color. JOHNSTON would also bring her mother magnesium to take through a nebulizer maintained by

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SILVERADO. This was permitted by SILVERADO to the extent that SILVERADO personnel actually gave MILLS the juice and provided the nebulizer. **No complaint or restriction on these practices was ever issued until JOHNSTON began uncovering instances of severe neglect concerning her mother's care—at which time she would face visitation bans to keep her from learning more.**

9. ***March – April of 2013:*** JOHNSTON AND PIERCE were largely responsible for their mother's progress as she regained her health post-hospitalization, but by March/April of 2013 JOHNSTON AND PIERCE simply could not stomach the gross neglect of their mother routinely experienced at SILVERADO CARE FACILITY. They were also upset that MILLS was billed more than $7000.00 per month for substandard care that was the rule, not the exception, leaving them to continuously supplement their mother's care with things neglected by SILVERADO, DEXEL AND LOTT. They demanded DEXEL and LOTT move MILLS and were refused, with DEXEL citing the relationships he had at SILVERADO, rather than concern for MILLS' well-being. JOHNSTON was persistent, notifying him each time she visited and the facility was understaffed and/or neglecting her mother.

10. ***On the heels of complaints to DEXEL, which escalated into an argument in which JOHNSTON warned she would file a grievance against his license, JOHNSTON is banned from visitation by DEXEL first MAY 17, 2013.*** Sherry Johnston was banned from visiting each time she complained about her mother's care or took a photo to document the neglect.

11. ***May 2013 – present:*** DAVID DEXEL appreciated SHERRY JOHNSTON being his eyes and ears on the ground and doing his work for him for the past three years so long as their interests were not adverse, as did GINGER LOTT. While the family could deal with DEXEL'S neglect and belligerence so long as they at least had the ability to help their mother by visiting daily to change her and bring fresh squeezed juices and home remedies for her urgent medical care, once DEXEL.

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LOTT and SILVERADO began acting to protect themselves from liability, rather than care for MILLS and became the impediment to her obtaining appropriate care, the situation became intolerable.

12. ***JUNE OF 2013*** – Inadequate staffing was the cause of Mrs. Mills falling from her wheelchair in JUNE of 2013, **breaking her foot, as well as the bedsores she currently suffers.** Though MILLS was supposed to have a caregiver present, she was left by the television and fell asleep, slouching over in her wheelchair as she fell to the floor, twisting and breaking her ankle. No precautions were in place to prevent this from happening despite the fact that MILLS has been wheelchair bound since her 2007 stroke. Moreover, the care given to her for her broken leg was so completely inadequate as to be despicable. The foot was never set or placed in a cast, only a leg brace. LOTT did not even bother to obtain the doctors' order, which said that the brace placed on her leg was not to be removed 24/7. She was actually advocating that the brace be taken off at night when the Doctors' orders prohibited this.. JOHNSTON'S diligence once again ensured this did not happen. This has resulted in the current urgent and very dire situation in which MILLS finds herself, very ill without adequate care, surrounded by individuals who would allow her to die before they face accountability for neglect. [3]

13. ***2013***: AS soon as SILVERADO'S outrageous neglect of Mrs. Mills surfaced and DEXEL'S liability became clear, LOTT, SILVERADO, AND DEXEL instituted various procedures designed to prevent the family from seeing what's really going on, including but not limited to:

    a. Visitation bans on Sherry, who visited daily and routinely discovered her mother lying in urine or feces, with a UTI, pneumonia, unchanged or unfed by caregivers

[3] When discussing liability for MILLS' broken foot in terms of whether Silverado would be made to pay the bills due to their neglect, CLARINDA COMSTOCK said, "what difference does it make? Your mother has plenty of money."

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b. Refusing to share medical records or permit family members to attend on doctors' appointments with doctors chosen exclusively by Dexel, Lott and Silverado

c. Using physicians to care for Willie Jo that were not independent, but rather, employees of the corporation, Silverado

d. Sudden bans on Sherry from taking photos of her mother (or kicking her out of the facility for doing so) when they had never objected to her taking photographs in the past.[4]

e. Bans on Sherry talking to other residents and/or their families, with whom she had been friends for several years (many of which were instituted by the families, not Sherry).

f. Refusing to permit Johnston or Pierce to remove Willie Jo without three days prior notice;

g. Assigning a "sitter" whose function seemed more to watch the family's visits with their mother than care for Willie Jo, particularly given that the sitter was not permitted to leave the room while they were present;

h. Misrepresentations and evasiveness regarding the status of Willie Jo's health and/or care;

14. ***SEPTEMBER 29, 2013:*** JOHNSTON writes DEXEL to inquire about side effects of the Exelon patch given to the ward, stating urgent concerns that MILLS is having adverse reactions to it, including weight loss, sleeping non-stop, and general decline in health all over due to remaining in bed and not having the energy to take in sufficient food and water by herself, no response.

15. ***DECEMBER 2013:*** GINGER LOTT, DAVID DEXEL, AND SILVERADO personnel are not acting in WILLIE JO MILLS' best interest, but rather, to cover up their own neglect which has resulted in her becoming extremely ill. Willie Jo Mills is dehydrated, not eating, weak, and on the decline fast. She is depressed without her daughter-visiting daily as was the practice of Sherry

[4] In fact, it was not until Dexel, Lott and Silverado became concerned about their legal liability that the family hit such a brick wall getting information about their mother's care;

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Johnston to feed her mother, ensure she was changed and had adequate nutrition and fluids. MILLS' health has taken a nose dive and she is in dire need of her daughters' care, since LOTT and others have demonstrated a blasé attitude and/or lukewarm concern. She is weak, has severe bedsores, is not eating or drinking sufficient fluids. Unless she begins eating soon to regain her strength, it is only a matter of time before she expires.

16. Due to months of gross neglect surfacing and the family obtaining evidence to prove that DAVID DEXEL AND GINGER LOTT's acts and omissions border reckless and intentional/malicious, both have taken every effort to shield themselves from liability. One could easily argue that DAVID DEXEL set himself up to be insulated from liability from the start, proposing Clarinda Comstock for ad litem, choosing GINGER LOTT to serve under him and succeed him in a secret hearing as he intentionally "threw her under the bus" to take the fall for his neglect.

17. Examples of DEXEL AND LOTT'S self serving behaviors are plentiful, but lie primarily in DEXEL'S control (and refusal to provide) of medical records, choosing new doctors that never previously treated MILLS (who were incidentally on staff and paid by SILVERADO even when they gave the appearance of working for Methodist or in private practice, such as Coo Nguyen and Stanley Fischer.). One has to question why DEXEL/LOTT would select Coo Nguyen, a sleep disorder doctor, to care for a heart/lung patient with a history of strokes who almost certainly should have had a Cardiologist, Neurologist, and/or Pulmonologist treating her. It is reckless to not once have taken MILLS to a Cardiologist when her incapacity stems from a cardiovascular incident in 2007 and doctors suspect MILLS' progressive dementia is stroke-related. Seniors with dementia (not related to Alzheimer's) notoriously suffer mini-strokes after CVA's strong enough to impair. MILLS has COPD, chronic obstructive lung disease and because DEXEL/LOTT won't take her to a pulmonologist, JOHNSTON personally cares for her, nebulizing her to bring up phlegm and mucus so she can breathe.

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18. For this reason, CINDY PIERCE seeks an Emergency Temporary Restraining Order, restraining GINGER LOTT from the acts listed and commanding LOTT to perform the tasks ordered below:

a. GINGER LOTT IS HEREBY RESTRAINED FROM THE FOLLOWING ACTS:

i. Blocking SHERRY JOHNSTON'S visitation with MILLS or even being involved in any decision of the care facility to bar JOHNSTON'S visitation for any specified reason;

ii. Refusing to provide information concerning WILLIE JO MILLS' health to any of her children;

iii. Refusing to permit the ward's children to access any medical or psychological record concerning WILLIE JO MILLS;

iv. Interfering in SHERRY JOHNSTON OR CINDY PIERCE'S ability to visit, contact, and/or care for their mother;

v. Violating any of the standards of minimum conduct for certified guardians;

vi. Falsifying information concerning CINDY PIERCE OR SHERRY JOHNSTON

vii. Refusing or neglecting to share any material fact concerning WILLIE JO MILLS' health and/or health care which is not known to PIERCE AND JOHNSTON;

viii. Speaking to JOHNSTON AND/OR PIERCE in anything less than a professional, cordial manner as a partner in care would do

ix. Conspiring with Hampton Management or personnel to hinder JOHNSTON OR PIERCE'S visitation and/or access to their mother in any fashion;

x. Sharing information concerning JOHNSTON AND PIERCE with management or personnel of Hampton that would tend to make HAMPTON personnel view either daughter in a negative light.

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xi. Falsifying any information whatsoever or covering up evidence regarding MILLS' injuries, condition, status, and/or care;

It is further ordered, adjudged and decreed that GINGER LOTT IS COMMANDED TO DO THE FOLLOWING ACTS:

xii. Immediately reinstate SHERRY JOHNSTON'S visitation, permitting JOHNSTON and HAMPTON to work out the terms of visitation and access to the ward without interference;

xiii. Provide a comprehensive report to the Court concerning the allegations made herein with detailed explanations of facts surrounding each occurrence to be filed within thirty days.

xiv. Provide a comprehensive report concerning the status of the ward as would be required of any guardian resigning or terminated by the Court to be filed within thirty days.

xv. Comply to the maximum extent possible with every Rule governing certified guardians;

xvi. Secure appointments for MILLS to see an independent Cardiologist, Pulmonologist, and Neurologist—all of which will be named by the Court;

xvii. IMMEDIATELY take MILLS to an osteopathic doctor to be named by the Court for a second opinion on the care of her foot and set if recommended to prevent further crippling, sharing information with the family immediately as well as the Court on such opinion;

xviii. IMMEDIATELY ensure that MILLS is eating and taking sufficient fluids and nutrition, making any necessary arrangements to ensure she has sufficient assistance;

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xix. Immediately have a doctor to be named by the Court provide a second opinion on the necessity of the Exelon patch and any negative side effects that it could cause and cease the patch if recommended by the second opinion;

xx. Obtain an air mattress and gel overlay for MILLS bed to treat MILLS' bedsores

xxi. Retain a wound care specialist for MILLS and provide a report to the Court. The specialist will be named by the Court;

xxii. Ensure all proper precautions are taken against the further progression of bedsores by MILLS;

xxiii. Ensure that MILLS receives adequate nutrition and fluids by mouth, whether by juicing or other recommended supplementation;

xxiv. Return MILLS to the Hospital if her condition does not improve immediately;

xxv. Submit her resignation as guardian of the person of WILLIE JO MILLS immediately and tender all required documentation;

VIII. TEMPORARY RESTRAINING ORDER

19. Texas law provides for a restraining order to be issued where there is proof of imminent, irreparable injury that cannot be compensated for at law, or in damages. TEX. R. CIV. P. 681. RULE 681 provides, "No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon."

20. The risk of death or serious illness could hardly be more imminent, irreparable and critical to justify the granting of a TRO. One can hardly imagine more dire circumstances of immediate, irreparable injury than finding your mother severely ill to the point of not taking in sufficient food and water, tearing skin from not having sufficient nutrition, bedsores from utter neglect, a

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deformed, twisted foot caused by neglect--on the verge of impending death if someone does not act now. But that is precisely the condition of WILLIE JO MILLS due to the gross neglect and conscious disregard of MILLS' welfare on the part of DAVID DEXEL AND GINGER LOTT.

21. Clearly, there is no adequate remedy at law when a person's life is at risk. If WILLIE JO MILLS does not begin eating and drinking fluids with nutritional value soon, she will almost certainly end up in hospice and pass away before this Court is able to conduct the hearings otherwise required in this matter.

22. APPLICANT pleads with this Court to take swift, certain action and sign the attached order to prevent further harm to WILLIE JO MILLS, an incapacitated person. GINGER LOTT'S malicious retaliatory acts designed to cover her and DEXEL'S utter neglect and recklessness have created a very dangerous situation, which is made all the more dangerous by virtue of the fact that LOTT AND DEXEL are in damage control mode—rather than truly being concerned about the ward's best interest as mandated.

IX. CONCLUSION & PRAYER

23. In conclusion, Applicant, CINDY PIERCE prays that this honorable Judge would grant this Emergency Application for Temporary Restraining Order ("TRO") based upon the imminent threat of severe harm (including death) to WILLIE JO MILLS, the incapacitated ward. GINGER LOTT has proven time and time again her incompetence, laziness, gross neglect, and recklessness where the health of WILLIE JO MILLS is concerned. LOTT is no longer acting in the best interests of the ward, if she ever was. She is now in damage control mode and more interested in covering up her neglect and avoiding the consequences than the well-being of WILLIE JO MILLS. APPLICANT prays that this Court immediately restrain and command GINGER LOTT in accordance with the order attached hereto and for her immediate removal, so that CINDY PIERCE can be appointed temporary and/or permanent guardian of the person of

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WILLIE JO MILLS while there is still time for CINDY AND SHERRY to try to help their mother regain her strength. APPLICANT prays for all other and further relief to which she is justly entitled at law or in equity.

Respectfully submitted,

William R Hester, Jr.
363 North Sam Houston Parkway
Suite 100/115
Houston, Texas 77060
SBN 09554200
Tel: 281.586.7999
Fax: 281.586.7997
Whester1969@gmail.com
LEAD ATTORNEY FOR SHERRY JOHNSTON AND CINDY PIERCE

SCHWAGER LAW FIRM
1417 RAMADA DR
HOUSTON, TEXAS 77062
TEL: 832.315.8489
FAX: 832.202.2777
schwagerlawfirm@live.com
ASSOCIATE COUNSEL FOR SHERRY JOHNSTON & CINDY PIERCE

FILED
2013 DEC -6 AM 11:22
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I, CANDICE L SCHWAGER, hereby certify that a true and correct copy of this Application and supporting evidence was served on all counsel of record this 5th day of December, 2013. Prior notice to opposing counsel was not possible due to the nature of this emergency, as counsel did not complete drafting until the morning of December 5, 2013.

Candice L Schwager

2013-72044 / Court 4 / 10025010

CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

ORDER GRANTING EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER AGAINST GINGER LOTT

On the _____ day of December, this Court came to consider APPLICANT, CINDY PIERCE'S EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER ("TRO") AGAINST GINGER LOTT. APPLICANT appeared with counsel, this verified TRO application and supporting photographs. Prior notice to opposing counsel was not possible due to the nature of this emergency, and because counsel did not complete drafting until the morning of December 5, 2013. After considering the TRO Application, all evidence attached thereto, sworn affidavits, photographs of WILLIE JO MILLS, an incapacitated person, and any response thereto, the Court finds that this Motion has MERIT and should be GRANTED;

It is therefore held that APPLICANT CINDY PIERCE'S EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER IS GRANTED in full unless otherwise specified;

It is therefore ordered that GINGER LOTT IS RESTRAINED FROM THE FOLLOWING ACTS:

i. Blocking SHERRY JOHNSTON'S visitation with MILLS or even being involved in any decision of the care facility to bar JOHNSTON'S visitation for any specified reason;

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ii. Refusing to provide information concerning WILLIE JO MILLS' health to any of her children;

iii. Refusing to permit the ward's children to access any medical or psychological record concerning WILLIE JO MILLS;

iv. Interfering in SHERRY JOHNSTON OR CINDY PIERCE'S ability to visit, contact, and/or care for their mother;

v. Violating any of the standards of minimum conduct for certified guardians;

vi. Falsifying information concerning CINDY PIERCE OR SHERRY JOHNSTON

vii. Refusing or neglecting to share any material fact concerning WILLIE JO MILLS' health and/or health care which is not known to PIERCE AND JOHNSTON;

viii. Speaking to JOHNSTON AND/OR PIERCE in anything less than a professional, cordial manner as a partner in care would do

ix. Conspiring with Hampton Management or personnel to hinder JOHNSTON OR PIERCE'S visitation and/or access to their mother in any fashion;

x. Sharing information concerning JOHNSTON AND PIERCE with management or personnel of Hampton that would tend to make HAMPTON personnel view either daughter in a negative light.

xi. Falsifying any information whatsoever or covering up evidence regarding MILLS' injuries, condition, status, and/or care;

It is further ordered, adjudged and decreed that GINGER LOTT IS COMMANDED TO DO THE FOLLOWING ACTS:

xii. Immediately reinstate SHERRY JOHNSTON'S visitation, permitting JOHNSTON and HAMPTON to work out the terms of visitation and access to the ward without interference;

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xiii. Provide a comprehensive report to the Court concerning the allegations made herein with detailed explanations of facts surrounding each occurrence to be filed within thirty days.

xiv. Provide a comprehensive report concerning the status of the ward as would be required of any guardian resigning or terminated by the Court to be filed within thirty days.

xv. Comply to the maximum extent possible with every Rule governing certified guardians;

xvi. Secure appointments for MILLS to see an independent Cardiologist, Pulmonologist, and Neurologist—all of which will be named by the Court;

xvii. IMMEDIATELY take MILLS to an osteopathic doctor to be named by the Court for a second opinion on the care of her foot and set if recommended to prevent further crippling, sharing information with the family immediately as well as the Court on such opinion;

xviii. IMMEDIATELY ensure that MILLS is eating and taking sufficient fluids and nutrition, making any necessary arrangements to ensure she has sufficient assistance;

xix. Immediately have a doctor to be named by the Court provide a second opinion on the necessity of the Exelon patch and any negative side effects that it could cause and cease the patch if recommended by the second opinion;

xx. Obtain an air mattress and gel overlay for MILLS bed to treat MILLS' bedsores

xxi. Retain a wound care specialist for MILLS and provide a report to the Court. The specialist will be named by the Court;

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xxii. Ensure all proper precautions are taken against the further progression of bedsores by MILLS;

xxiii. Ensure that MILLS receives adequate nutrition and fluids by mouth, whether by juicing or other recommended supplementation;

xxiv. Return MILLS to the Hospital if her condition does not improve immediately;

xxv. Submit her resignation as guardian of the person of WILLIE JO MILLS immediately and tender all required documentation;

ALL OTHER RELIEF NOT EXPRESSLY GRANTED HEREIN IS DENIED.

SIGNED THIS _____ DAY OF DECEMBER, 2013.

TIME: _____

_____
PRESIDING JUDGE

THIS INSTRUMENT RETURNED
UNSIGNED BY JUDGE'S OFFICE

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SILVERADO

AT HOME • SENIOR LIVING • HOSPICE

- Summary
- Speakers
- Agenda
- Sponsors



Stanley Fisher, M.D.

Dr. Stanley Fisher has been with the Methodist Neurological Institute (MNI) for more than seven years. He is a Fc and Co-Director of the Movement Disorders and Neurorehabilitation Center at MNI and Associate Professor of N at Weill Cornell Medical College.

Dr. Fisher was a robotic engineer before returning to Temple University, where he graduated Summa Cum Laude BA in Biology and Cognitive Neuroscience. He Graduated from the MCP-Hahnemann School of Medicine in Phila and completed his internship before moving to Texas.

After he completed his residency in Neurology and Fellowship in Movement Disorders at The University of Texas Houston, Dr. Fisher combined his skills as a robotic engineer, fitness trainer and neurologist to do research in the robotically-assisted technology for neurological rehabilitation. He became a nationally recognized expert in the fi Neuromodulation, utilizing implantable devices for the treatment of Parkinson disease, tremor, dystonia as well a spasticity due to stroke, multiple sclerosis or traumatic brain and spinal cord injury. For the last eight years he ha serving as a Program Director for Neurological Rehabilitation at the the HealthSouth Center for Neurological Rese and Recovery in Houston, TX which includes four Acute Rehabilitation Hospitals in Houston Area.

Dr. Fisher is involved in clinical research related to psychosis and emotional lability in patients with neurodegene disorders. He is currently serving as a Medical Director for the Silverado Senior Leaving communities in Houston. Fisher is a Primary Investigator on the study of IGIV for the treatment of Mild to Moderate Alzheimer's Disease.

Dr. Fisher is also an Adjunct Professor at the Department of Health and Human Performance at the University of and actively involved in the research at the affiliated Center for Neuromotor and Biomechanics Research at the N Center for Human Performance.

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Dr. Stanley Fisher

Dr. Fisher provides oversight and guidance for all resident care services at Silverado. He is involved in education and training of our staff, and joins our team with an extensive background in research and treatment of patients with neurodegenerative disorders. After receiving his medical degree from MCP-Hahnemann School of Medicine, Dr. Fisher completed his residency in Neurology and fellowship in Movement Disorders at the University of Texas-Houston. In 2005 he founded the Movement Disorders and Neurorehabilitation Center at the Methodist Neurological Institute where he has been the director for the last eight years.

He has also served as the program director for Neurological Rehabilitation at the Healthsouth Center for Neurological Research and Recovery for the past nine years. Dr. Fisher currently is an Associate Professor of Neurology at Weill Cornell Medical College and is involved in many research initiatives in the fields of Parkinson's, Alzheimer's and other neurodegenerative disorders.

< Previous (/silverado-locations/texas/the-woodlands/the-woodlands/articles/local-team/medical-director/)

Next > (/silverado-locations/texas/the-woodlands/the-woodlands/articles/local-team/director-of-health-services/)

More local team

Director of Health Services

Kristie Tschumperlin

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE ~~DISTRICT~~ County COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of December 2013, SHERRY JOHNSTON, appeared before me and testified under oath as follows:

"My name is SHERRY JOHNSTON. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this verification. I have read the Emergency Application for Temporary Guardianship filed by CINDY PIERCE in the above-referenced matter as well as the Emergency Application for Temporary Restraining Order and Emergency Motion to Remove Ginger Lott. All statements made therein are true and correct based upon my personal knowledge. The attached documents and photographs are true and correct copies concerning Willie Jo Mills. Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SIGNED BEFORE ME THIS 6th DAY OF DECEMBER, 2013.

ADEKEMI AZEEZ
My Commission Expires
August 17, 2015

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NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE ~~DISTRICT~~ County COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

SECTION 633 NOTICE
AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of DECEMBER 2013, personally appeared before me SHERRY JOHNSTON, who did under oath testify as follows:

"My name is SHERRY JOHNSTON I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude and am in all ways competent to execute this affidavit. I do solemnly swear that a copy of the AMENDED EMERGENCY APPLICATION FOR TEMPORARY GUARDIANSHIP was mailed to the following individuals by certified mail return receipt requested, as provided for by the rules, pursuant to Texas Probate Code, Section 633:

Willie Jo Mills ("Ward")
7450 Willowchase Blvd #3
Houston, Texas 77070

Larry Mills – Brother of Sherry Johnston, Son of Willie Jo Mills
3103 Birch Park Lane
Houston, Texas 77073

Ginger Lott by and through Louis Ditta
770 South Post Oak Lane, Suite 500
Houston, Texas 77056
Phone - 713-655-1550

Clarinda Comstock
1 Riverway #2300

Section 633 Notice

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Houston, Texas, 77056
FAX: 713 961-8022
Gene Arney, Brother of Ward
4203 Little Crest
Houston Texas 77093

Vicki Foster, Sister of Ward
4203 Little Crest
Houston Texas 77093

Faye Cooper, Sister of Ward
3110 Birch Park Lane
Houston Texas 77073

Patricia Cowart, Sister of Ward
13347 Corpus Christi
Houston Texas 77015

David Dexel, Guardian of Estate of Willie Jo Mills
FAX: 713-527-9379
P.O. Box 66790
Houston, Texas 77266

Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SUBSCRIBED AND SWORN TO UNDER OATH BEFORE ME ON THE 6th DAY OF DECEMBER, 2013.

Adekemi A
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

ADEKEMI AZEEZ
My Commission Expires
August 17, 2015

Section 633 Notice

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE ~~DISTRICT~~ County COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF CINDY PIERCE

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of December 2013, CINDY PIERCE, appeared before me and testified under oath as follows:

"My name is CINDY PIERCE. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this verification. I have read the EMERGENCY APPLICATION FOR TEMPORARY GUARDIANSHIP, EMERGENCY MOTION TO REMOVE GINGER LOTT, AND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER concerning my mother, WILLIE JO MILLS, in the above-referenced matter. All statements made therein are true and correct based upon my personal knowledge. The attached documents and photographs are true and correct copies concerning Willie Jo Mills. Further affiant sayeth not."

CINDY PIERCE

SIGNED BEFORE ME THIS 6 DAY OF DECEMBER, 2013.

NOTARY PUBLIC
ADEKEMI AZEEZ
My Commission Expires
August 17, 2015
STATE OF TEXAS

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF CINDY PIERCE

copy filed per Atty

filed as is per Atty

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of December 2013, CINDY PIERCE, appeared before me and testified under oath as follows:

"My name is CINDY PIERCE. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this verification. I have read the EMERGENCY APPLICATION FOR TEMPORARY GUARDIANSHIP, EMERGENCY MOTION TO REMOVE GINGER LOTT, AND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER concerning my mother, WILLIE JO MILLS, in the above-referenced matter. All statements made therein are true and correct based upon my personal knowledge. The attached documents and photographs are true and correct copies concerning Willie Jo Mills. Further affiant sayeth not."

CINDY PIERCE

FILED
2013 DEC 16 AM 11:38
STAN STANART
COUNTY CLERK
HARRIS COUNTY, TEXAS

SIGNED BEFORE ME THIS 6 DAY OF DECEMBER, 2013.

ADEKEMI AZEEZ
My Commission Expires
August 17, 2015

Adekemi A

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of December 2013, SHERRY JOHNSTON, appeared before me and testified under oath as follows:

"My name is SHERRY JOHNSTON. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this verification. I have read the Emergency Application for Temporary Guardianship filed by CINDY PIERCE in the above-referenced matter as well as the Emergency Application for Temporary Restraining Order and Emergency Motion to Remove Ginger Lott. All statements made therein are true and correct based upon my personal knowledge. The attached documents and photographs are true and correct copies concerning Willie Jo Mills. Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SIGNED BEFORE ME THIS 6th DAY OF DECEMBER, 2013.

ADEKEMI AZEEZ
My Commission Expires
August 17, 2015

A Adekemi
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE ~~DISTRICT~~ County COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

SECTION 633 NOTICE
AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §

COUNTY OF HARRIS §

On the 6th day of DECEMBER 2013, personally appeared before me SHERRY JOHNSTON, who did under oath testify as follows:

"My name is SHERRY JOHNSTON I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude and am in all ways competent to execute this affidavit. I do solemnly swear that a copy of the AMENDED EMERGENCY APPLICATION FOR TEMPORARY GUARDIANSHIP was mailed to the following individuals by certified mail return receipt requested, as provided for by the rules, pursuant to Texas Probate Code, Section 633:

Willie Jo Mills ("Ward")
7450 Willowchase Blvd #3
Houston, Texas 77070

Larry Mills – Brother of Sherry Johnston, Son of Willie Jo Mills
3103 Birch Park Lane
Houston, Texas 77073

Ginger Lott by and through Louis Ditta
770 South Post Oak Lane, Suite 500
Houston, Texas 77056
Phone - 713-655-1550

Clarinda Comstock
1 Riverway #2300

Section 633 Notice

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Houston, Texas, 77056
FAX: 713 961-8022
Gene Arney, Brother of Ward
4203 Little Crest
Houston Texas 77093

Vicki Foster, Sister of Ward
4203 Little Crest
Houston Texas 77093

Faye Cooper, Sister of Ward
3110 Birch Park Lane
Houston Texas 77073

Patricia Cowart, Sister of Ward
13347 Corpus Christi
Houston Texas 77015

David Dexel, Guardian of Estate of Willie Jo Mills
FAX: 713-527-9379
P.O. Box 66790
Houston, Texas 77266

Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SUBSCRIBED AND SWORN TO UNDER OATH BEFORE ME ON THE 6 DAY OF DECEMBER, 2013.

Adekemi A
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

ADEKEMI AZEEZ
My Commission Expires
August 17, 2015

Section 633 Notice

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE COUNTY COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

EMERGENCY MOTION TO REMOVE GINGER LOTT AS GUARDIAN OF THE PERSON OF WILLIE JO MILLS, INCAPACITATED

COMES NOW, CINDY PIERCE ("APPLICANT") and files this EMERGENCY MOTION TO REMOVE GINGER LOTT from serving as guardian of the person of WILLIE JO MILLS ("MILLS"), pursuant to Section 761 of the Texas Probate Code and Minimum Standards of Conduct governing Certified Guardians. GINGER LOTT must be removed for gross neglect, conscience indifference, recklessness and conduct in violation of multiple provisions of the minimum standards governing certified guardians. **GINGER LOTT'S acts and omissions have placed the ward's health in danger to an outrageous and unacceptable degree. This is a true emergency in that, the Court's failure to act could very well result in the imminent death of WILLIE JO MILLS—that may otherwise be averted by critical and timely intervention of her daughters.** The acts and omissions of Ginger Lott have arisen to such a mentally culpable state that she must be removed immediately to avoid further harm to the ward so that the family is permitted to access their mother and help her regain stability. *See Affidavits of Cindy Pierce and Sherry Johnston attesting to the facts alleged in this Emergency Motion to Remove Ginger Lott and Exhibit 2, photographs of Willie Jo Mills 2012-2013.*

WILLIE JO MILLS was just released from the hospital and her health is on an urgent, *steep declin*e in sharp contrast to the health she enjoyed when her daughter, Sherry Johnston was permitted to visit her and care for her daily. CINDY PIERCE visited her mother Wednesday, the 4th of December and was ALARMED at her mother's appearance and LOTT'S continued exhibition of gross neglect and reckless disregard of her mother's needs. *See Affidavit of Cindy*

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Pierce with true and correct copies of Photographs of Willie Jo Mills. **MILLS suffers deep bedsores and a crooked, broken foot that was never adequately treated after being broken at Silverado. SHE IS NOT EATING, HARDLY DRINKING, AND HER SKIN IS THIN "SARAN WRAP" APPEARING COVERED WITH DARK SPOTTING AND TEARS. She is extremely sick and needs her daughters to provide the care they have provided—when not thwarted by GINGER LOTT.**

If the Court fails to act, WILLIE JO MILLS may die. This risk is elevated and CINDY PIERCE requests an entry of the contemporaneously filed EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER ("TRO"). PIERCE asks the Court to grant HER MOTION TO REMOVE GINGER LOTT AS GUARDIAN OF THER PERSON OF WILLIE JO MILLS and EMERGENCY MOTION FOR TEMPORARY GUARDIANSHIP OF THE PERSON OF WILLIE JO MILLS. In support of this Emergency Motion to Remove GINGER LOTT, APPLICANT present shocking evidence and photographs of Mrs. Mills to the Court. PIERCE alleges the following:

III. JURISDICTION & VENUE

1. Jurisdiction lies in the Harris County, Texas, Statutory Probate Court. Tex. Prob. Code § 607D. The Harris County Statutory Probate Court has exclusive jurisdiction over guardianship WILLIE JO MILLS, as she is subject to a pending guardianship in Harris County and has at all times resided in Harris County, Texas since the guardianship began. Venue is appropriate in Harris County because the ward resides in Harris County, Texas with the Applicant at the time the Guardianship is being filed.

IV. *SUMMARY OF FACTS & RELIEF REQUESTED*

2. Pierce and Johnston had spent more than $40,000 in attorneys' fees to preserve their mother's estate and ensure she is well cared-for, in addition to thousands of dollars on a van to transport their mom's

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wheelchair and other items for her care. SHERRY JOHNSTON AND CINDY PIERCE visited their mother almost daily, bringing nutritional supplementation including but not limited to fresh squeezed juices, coconut oil, vegetable juice, as well as nebulizer treatments with minerals for her chronic obstructive lung disease ("COPD"). JOHNSTON purchased a wheel chair and recliner for her mother when DEXEL neglected to do so.

3. JOHNSTON AND PIERCE have spent countless nights camped out in hospital rooms with their mother to ensure her needs were met—in anticipation that DAVID DEXEL AND GINGER LOTT would do nothing, their usual practice. MILLS has been hospitalized twice and taken for emergency treatment in JUNE when she suffered a broken foot caused by SILVERADO'S neglect.[1] However intolerable their experience with DEXEL AND LOTT has been, it came nothing near the outrage CINDY PIERCE felt on December 4, 2013 when she visited her mother after being released from the hospital for pneumonia. *See Affidavit of Cindy Pierce.*

4. Pierce submits true and correct copies of the photographs she took that night of her mother (under the care of GINGER LOTT nearly two weeks after JOHNSTON'S visitation was revoked by LOTT) for the Court's review. Id. **A picture truly speaks a thousand words, revealing how very ill WILLIE JO MILLS is right now. She is not eating, hardly drinking, and appears sedated (possibly the Exelon patch given to her) to the point that she does not attempt to eat or drink. Her broken foot was not set by GINGER LOTT AND DAVID DEXEL and remains twisted and deformed. Her legs are dark, spotted with thin skin to the point of translucent and tearing, like saran wrap. PIERCE AND JOHNSTON fear for their mother's life is this Court does not grant this Emergency Motion and Remove Ginger Lott as guardian of the person immediately. At the rate GINGER LOTT is going, WILLIE JO MILLS will be deceased before hearings can**

[1] Neither DEXEL nor LOTT visited the ward in the hospital or bothered to call and check on her progress

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be held on PIERCE'S Application for Permanent Guardianship of MILLS' person and estate. PIERCE prays this Court acts now!

V. ***SUMMARY OF LOTT'S GROSS NEGLECT & RECKLESSNESS***[2]

5. Throughout the time GINGER LOTT fulfilled DEXEL'S responsibilities as guardian to MILLS to now, LOTT has been grossly negligent and reckless concerning MILLS' care. Her acts and omissions include:

    a. October 2012 Hospitalization: Failing to ensure that Willie Jo Mills was hospitalized for pneumonia and a severe urinary tract infection in October of 2012:

    b. Failing to ensure that proper patient-caregiver ratios were complied with in violation of patient care plans

    c. Failing to do anything to help WILLIE JO MILLS regain her health throughout the fall of 2013, leaving all responsibility on JOHNSTON AND PIERCE to do their jobs for them;

    d. Failing to promptly move MILLS when SILVERADO experienced a sharp decline in quality of care

    e. Recklessly and Maliciously blocking JOHNSTON from all contact with her mother in retaliation for "rocking the boat" by asking too many questions and interrogating LOTT and caregivers concerning her mother, when JOHNSTON was providing substantive care not given to MILLS daily. This resulted in a sharp decline in MILLS' health, leaving her as ill as her daughters have ever seen her on December 4, 2013;

    f. Maliciously blocking the family from access to any and all information or records about their mother's dire health decline to cover their mistakes

[2] Though Lott was FORMALLY appointed as guardian of the person of WILLIE JO MILLS September 17, 2013, she has served as DAVID DEXEL'S representative and/or alter ego for the past several years, acting in his place. For this reason, the acts and omissions delineated should be charged to her for both time periods. As a licensed guardian, she is held to certain minimum standards that she has not met.

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g. Recklessly failing to have MILLS treated by a Cardiologist or Pulmonologist throughout the guardianship up to now, when MILLS is a heart and lung patient who is in a dementia facility due to alleged stroke.

h. Recklessly failing to ensure that MILLS leg and foot were properly set in a cast or stabilizing brace and Doctors' orders followed so that the brace remained in place 24 hours per day and not removed to allow her foot to dangle;

i. Recklessly permitting MILLS to acquire bed sores 1/4 " deep or more and doing nothing to get rid of the sores, such as purchasing a gel overlay mattress and/or air mattress through Medicare (rendering the products almost free). MILLS had a gel overlay mattress at Silverado and after it disappeared, DEXEL AND LOTT wholly failed to replace it or find a substitute. JOHNSTON AND PIERCE repeatedly asked for an air mattress and/or gel overlay to be purchased—to no avail. Rather than purchase appropriate bedding for MILLS, LOTT has permitted her to become progressively more ill due to bedsores, doing nothing. On December 4, 2013, Pierce refused the inadequate bed LOTT brought for her mother. See photograph produced of same bed already in MILLS' room.

j. Not ensuring that MILLS had sufficient fruit and vegetable intake to keep her skin from not breaking down and sloughing off

k. Failing to act with any urgency as the 130 lb. MILLS weight plummeted to 107 lbs. and she stopped eating or taking sufficient fluids.

l. Failing to ensure that MILLS saw a Neurologist since the beginning of the guardianship, other than when required for DEXEL'S annual report or the initial evaluations for the guardianship.

m. Recklessly continuing the Exelon patch, which causes MILLS to act drugged, sluggish and not eat or drink sufficiently;

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n. Intentionally pushing her responsibilities off on PIERCE AND JOHNSTON or simply not doing them;

o. Intentionally neglecting to look into persistent notifications that upon arrival of Cheryl (Nurse) or Johnston, MILLS was soaked in urine with evidence she had not been changed in many hours;

p. Committing a Class B Misdemeanor by failing to report the neglect to Adult Protective Services;

q. Refusing to request a lift be purchased to help lift MILLS in and out of bed even after a staff member fell on her mother and knocked her down and MILLS suffered a broken foot due to inadequate staffing.

r. Recklessly failing to prevent MILLS from acquiring bedsores by ensuring she was moved frequently and had appropriate bedding;

s. Intentionally and maliciously suppressing CRITICAL information, records, physician's statements, while prohibiting photographs, recordings, or taping of any meeting or matter involving DEXEL, LOTT OR SILVERADO, prohibiting JOHNSTON from talking to other families about their neglect and punishing her routinely with malicious bans that harm MILLS by taking away the one person there feeding her and nursing her to health day in and day out;

VI. TIMELINE ENCOMPASSING LOTT'S RECKLESSNESS AND GROSS NEGLECT

6. ***OCTOBER 2012***: Willie Jo Mills ("MILLS") contracted a urinary tract infection and pneumonia in October of 2012, mandating that she be hospitalized. Leslie Love, her nurse at Silverado, refused to take Willie Jo to the hospital **in favor of hospice** over the vehement objections of the family. MILLS was not terminal, rendering hospice **inappropriate**. MILLS developed the UTI and pneumonia from sitting in bed 20 hours per day in wet diapers that were found double wrapped (illegal). *Because*

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DEXEL AND LOTT did nothing while MILLS became sicker, SHERRY JOHNSTON had to take her mother to the hospital and admit her. Doctors confirmed SHERRY JOHNSTON'S suspicions, that her mother had a UTI and pneumonia. Consistent with DEXEL and LOTT'S usual neglect, they did not visit or call to check on WILLIE JO MILLS the entire eight days she was hospitalized. Shortly after this incident, Leslie Love was transferred out of SILVERADO KINGWOOD TO SILVERADO CYPRESSWOOD.

7. ***Fall of 2012:*** The prior Administrator, Chris, worked through issues with the family and dealt swiftly to diffuse problems. In late 2012, Chris was transferred and Megan Christopher was transferred from another Silverado facility to Kingwood to serve as administrator. Megan Christopher's specialty is *marketing—and profit has been her consistent focus, at the cost of good patient care and proper staffing ratios.* Since Christopher began running the facility, she boasted about the profit she made for Silverado—by chronic understaffing, violating care plans. Other questionable profit making schemes included making families pay for extra caregivers beyond the $7000.00 per month (rather than Silverado be forced to adequately staff) and bringing in hospice to care for residents who fell ill.

8. ***November – December of 2012:*** SHERRY JOHNSTON and/or CINDY PIERCE visited MILLS almost daily, bringing juices (fresh fruits and vegetables pureed) and other nutritional supplementation and **spoon fed her until MILLS regained her strength and WAS ABLE TO FEED HERSELF.** Her skin was so thin it tore before JOHNSTON began juicing her mom, but by the end of two weeks of juicing, the collagen had returned as well as healthy looking color. JOHNSTON would also bring her mother magnesium to take through a nebulizer maintained by SILVERADO. This was permitted by SILVERADO to the extent that SILVERADO personnel actually gave MILLS the juice and provided the nebulizer. **No complaint or restriction on these practices was ever issued until JOHNSTON began uncovering instances of severe neglect**

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concerning her mother's care—at which time she would face visitation bans to keep her from learning more.

9. ***March – April of 2013:*** By March/April of 2013 JOHNSTON AND PIERCE simply could not stomach the gross neglect of their mother routinely experienced at SILVERADO CARE FACILITY. They were also upset that MILLS was billed more than $7000.00 per month for substandard care that was the rule, not the exception, leaving them to continuously supplement their mother's care with things neglected by SILVERADO, DEXEL AND LOTT. They demanded DEXEL and LOTT move MILLS and were refused, with DEXEL citing the relationships he had at SILVERADO, rather than concern for MILLS' well being. JOHNSTON was persistent, notifying him each time she visited and the facility was understaffed and/or neglecting her mother.
10. **On the heels of complaints to DEXEL, which escalated into an argument in which JOHNSTON warned she would file a grievance against his license, JOHNSTON is banned from visitation by DEXEL first *MAY 17, 2013*.** Sherry Johnston was banned from visiting each time she complained about her mother's care or took a photo to document the neglect.
11. ***May 2013 – present:*** DAVID DEXEL appreciated SHERRY JOHNSTON being his eyes and ears on the ground and doing his work for him for the past three years so long as their interests were not adverse, as did GINGER LOTT. While the family could deal with DEXEL'S neglect and belligerence so long as they at least had the ability to help their mother by visiting daily to change her and bring fresh squeezed juices and home remedies for her urgent medical care, once DEXEL. LOTT and SILVERADO began acting to protect themselves from liability, rather than care for MILLS and became the impediment to her obtaining appropriate care, the situation became intolerable.
12. ***JUNE OF 2013*** – Inadequate staffing was the cause of Mrs. Mills falling from her wheelchair in JUNE of 2013, **breaking her foot, as well as the bedsores she currently suffers.** Though

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MILLS was supposed to have a caregiver present, she was left by the television and fell asleep, slouching over in her wheelchair as she fell to the floor, twisting and breaking her ankle. No precautions were in place to prevent this from happening despite the fact that MILLS has been wheelchair bound since her 2007 stroke. Moreover, the care given to her for her broken leg was so completely inadequate as to be despicable. The foot was never set or placed in a cast, only a leg brace. LOTT did not even bother to obtain the doctors' order, which said that the brace placed on her leg was not to be removed 24/7. She was actually advocating that the brace be taken off at night when the Doctors' orders prohibited this.. JOHNSTON'S diligence once again ensured this did not happen. This has resulted in the current urgent and very dire situation in which MILLS finds herself, very ill without adequate care, surrounded by individuals who would allow her to die before they face accountability for neglect. [3]

13. ***2013***: AS soon as SILVERADO'S outrageous neglect of Mrs. Mills surfaced and DEXEL'S liability became clear, LOTT, SILVERADO, AND DEXEL instituted various procedures designed to prevent the family from seeing what's really going on, including but not limited to:

    a. Visitation bans on Sherry, who visited daily and routinely discovered her mother lying in urine or feces, with a UTI, pneumonia, unchanged or unfed by caregivers

    b. Refusing to share medical records or permit family members to attend on doctors' appointments with doctors chosen exclusively by Dexel, Lott and Silverado

    c. Using physicians to care for Willie Jo that were not independent, but rather, employees of the corporation, Silverado

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[3] When discussing liability for MILLS' broken foot in terms of whether Silverado would be made to pay the bills due to their neglect, CLARINDA COMSTOCK said, "what difference does it make? Your mother has plenty of money."

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d. Sudden bans on Sherry from taking photos of her mother (or kicking her out of the facility for doing so) when they had never objected to her taking photographs in the past.[4]

e. Bans on Sherry talking to other residents and/or their families, with whom she had been friends for several years (many of which were instituted by the families, not Sherry).

f. Refusing to permit Johnston or Pierce to remove Willie Jo without three days prior notice;

g. Assigning a "sitter" whose function seemed more to watch the family's visits with their mother than care for Willie Jo, particularly given that the sitter was not permitted to leave the room while they were present;

h. Misrepresentations and evasiveness regarding the status of Willie Jo's health and/or care;

14. ***SEPTEMBER 29, 2013:*** JOHNSTON writes DEXEL to inquire about side effects of the Exelon patch given to the ward, stating urgent concerns that MILLS is having adverse reactions to it, including weight loss, sleeping non-stop, and general decline in health all over due to remaining in bed and not having the energy to take in sufficient food and water by herself, no response.

15. ***DECEMBER 2013:*** GINGER LOTT, DAVID DEXEL, AND SILVERADO personnel are not acting in WILLIE JO MILLS' best interest, but rather, to cover up their own neglect which has resulted in her becoming extremely ill. Willie Jo Mills is dehydrated, not eating, weak, and on the decline fast. She is depressed without her daughter-visiting daily as was the practice of Sherry Johnston to feed her mother, ensure she was changed and had adequate nutrition and fluids. MILLS' health has taken a nose dive and she is in dire need of her daughters' care, since LOTT and others have demonstrated a blasé attitude and/or lukewarm concern. She is weak, has severe bedsores, is not eating or drinking sufficient fluids. Unless she begins eating soon to regain her strength, it is only a matter of time before she expires.

[4] In fact, it was not until Dexel, Lott and Silverado became concerned about their legal liability that the family hit such a brick wall getting information about their mother's care;

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16. One could easily argue that DAVID DEXEL set himself up to be insulated from liability from the start, proposing Clarinda Comstock for ad litem, choosing GINGER LOTT to serve under him and succeed him in a secret hearing as he intentionally "threw her under the bus" to take the fall for his neglect.

17. Examples of DEXEL AND LOTT'S self serving behaviors are plentiful, but lie primarily in DEXEL'S control (and refusal to provide) of medical records, choosing new doctors that never previously treated MILLS (who were incidentally on staff and paid by SILVERADO even when they gave the appearance of working for Methodist or in private practice, such as Coo Nguyen and Stanley Fischer.). One has to question why DEXEL/LOTT would select Coo Nguyen, a sleep disorder doctor, to care for a heart/lung patient with a history of strokes who almost certainly should have had a Cardiologist, Neurologist, and/or Pulmonologist treating her. It is reckless to not once have taken MILLS to a Cardiologist when her incapacity stems from a cardiovascular incident in 2007 and doctors suspect MILLS' progressive dementia is stroke-related. Seniors with dementia (not related to Alzheimer's) notoriously suffer mini-strokes after CVA's strong enough to impair. MILLS has COPD, chronic obstructive lung disease and because DEXEL/LOTT won't take her to a pulmonologist, JOHNSTON personally cares for her, nebulizing her to bring up phlegm and mucus so she can breathe.

18. For this reason, CINDY PIERCE requests that this Honorable Judge grant this Motion to Remove GINGER LOTT immediately so that PIERCE and JOHNSTON can access their mother and help nurse her back to health before she takes an irreversible turn for the worse, if that has not already occurred.

IX. EMERGENCY REMOVAL OF GINGER LOTT

20. Texas Probate Code Section § 761 governs REMOVAL of COURT APPOINTED GUARDIANS. Section 761 states:

Exhibit O, Dec. 19. 2016 Page 15 of 42

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(7) has neglected or cruelly treated a ward.

21. It is undisputable that GINGER LOTT, both now and while in the employ of DAVID DEXEL, has grossly neglected WILLIE JO MILLS. The egregiousness of conduct borders conscious indifference, recklessness and even intentional. GINGER LOTT, to cover up her own neglect and punish SHERRY JOHNSTON for stepping on her toes, is cruelly upsetting WILLIE JO MILLS by unreasonably denying SHERRY JOHNSTON access to her mother so that she can care for her and visit her. GINGER LOTT knows that SHERRY JOHNSTON visited daily almost without exception and in her vengeance to punish JOHNSTON for offending her, is cruelly treating WILLIE JO, who very much loves and misses her daughter.

22. Under the circumstances presented to this Court, Section 761 permits removal of a guardian without notice—if that guardian has neglected a ward or treated him or her cruelly. There are ample grounds in this case for removal under this section. Nevertheless, the Court should also consider GINGER LOTT'S multiple violations of the Minimum Standards governing certified guardians and relevant Rules of Conduct in deciding to remove GINGER LOTT immediately.

X. *VIOLATIONS OF MINIMUM STANDARDS*

23. GINGER LOTT'S violation of the minimum standards governing certified guardians is proof of the very negligence required under Section 761 to remove her from this case, if not remove her license.

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The following is a short list of GINGER LOTT'S rule violations, mandating immediate removal without notice:

a. **Standard 4:** (1) GINGER LOTT has **not once tried to maintain a professional relationship with the ward's family**—primarily, SHERRY JOHNSTON AND CINDY PIERCE. Despite the fact that LOTT admits she has no issue with PIERCE, she has treated her only marginally better than SHERRY JOHNSTON, whom she is constantly banning from the premises where her mother lives. This harms WILLIE JO—a fact that eludes the callous LOTT. (II). GINGER LOTT has not once given any objective sign (such as trying to work through conflict with family rather than instituting punitive, retaliatory measures) that she "recognize(s) the value of family and friends to the quality of life of the ward" such that she encourages maintaining contact between the ward and family. To the contrary, she is the impediment to WILLIE JO MILLS enjoying contact with her daughters. They cannot even visit in private when LOTT permits visitation. The only way MILLS' life has any chance of returning to normalcy to have the simple pleasure of seeing her daughters and having them care for her is for the Court to remove GINGER LOTT. (III) GINGER LOTT has not once assisted the ward with maintaining relationships with family and friends. She is the caustic substance in the mix that keeps the family in upheaval.

b. Standard 5: (IV) GINGER LOTT has wholly failed to engage the services of professionals (such as Cardiologists, Neurologists, Orthopedists, and wound care physicians) necessary to appropriately meet the needs of MILLS in compliance with the Probate Code.

c. Standard 6: Informed Consent: (I) GINGER LOTT has failed to even try to comply with this rule as it pertains to even the simplest facets of GINGER LOTT'S management of her person. Despite DEXEL/LOTT'S outrageous talk with MILLS after she was declared incompetent to decide whether a DNR would be in place, Doctors have listed many things

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MILLS is able to decide, such as her living arrangements. While moving MILLS to the sicker side of SILVERADO, MILLS was not consulted. MILLS has not been consulted on the simplest of issues, such as whether she would like her foot set instead of dangling crooked and deformed. She has no say and is essentially, GINGER LOTT'S prisoner.

d. Standard 7: (1) GINGER LOTT routinely fails to make decisions on an "informed basis" and thus, violates this rule. Without even looking at the doctors' order prohibiting MILLS' foot brace from being removed EVER, LOTT told caregivers to take it off at night. MILLS is a heart/stroke patient with COPD but has not been to a Cardiologist, Neurologist (except for purposes of the prior guardian's reporting and the guardianship), or Pulmonologist the entire duration of being subject to guardianship. LOTT cannot begin to explain the utter neglect in having no cardiologist for a heart/stroke patient who she claims has had multiple. There is no excuse for such reckless disregard for the welfare of the ward and LOTT can hardly claim she is making informed decisions when she consults no one qualified to make such decisions.

(III) Best Interests of the Ward – again for reasons stated herein, it is quite clear that LOTT is not acting in the ward's best interest, but her own instead. LOTT has not considered the least restrictive means of achieving her objectives with respect to JOHNSTON by punishing JOHNSTON with a complete ban during the ward's birthday and entire Thanksgiving holiday. LOTT has refused to respond to correspondence from JOHNSTON since her November 18, 2013 ban (for what amounts to seeing her mother's horrid bedsores), asking to alert her as to when she can visit, call and/or pick her mother up for visits. There is no proof that anything JOHNSTON ever did while visiting her mother did anything but nurture and care for her and certainly no substantial proof that what the ward wishes for—SHERRY to visit—would cause her harm. LOTT simply doesn't consider MILLS' wishes at all, violating the foregoing rules.

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e. Standard 8: Least Restrictive Alternative: (I) LOTT has failed to consider the least restrictive alternative for MILLS multiple times and certainly in connection with Sherry Johnston. JOHNSTON is not able to even call her mother on the phone due to LOTT, much less visit or take her to lunch. This has endured since November 18th through MILLS' 86th birthday and Thanksgiving Holiday. These are precious occasions this family may not see again and LOTT is callous and retaliatory, thinking nothing of MILLS' right to have any form of self-determination. LOTT has made no effort to know the ward's preferences regarding her living arrangements. MILLS was moved by DEXEL/LOTT to a sicker side of SILVERADO without notice to anyone in her family or otherwise. MILLS had no input in the matter—much like every other facet of her life. LOTT would be hard pressed to name anything MILLS gets to choose. This is significant because doctors have said she is capable of doing so.

f. Standard 12: Duties of the Guardian of the Person: LOTT has failed to ensure that the ward is living in the most appropriate environment—one that addresses her wants and needs. PIERCE AND JOHNSTON was the impetus behind DEXEL finally agreeing to move MILLS from SILVERADO, where all of his friends were. LOTT cannot even seem to order the appropriate bed for MILLS, much less pick the appropriate residence and care facility. LOTT has failed to ensure that provision was made for MILLS' comfort and health and done nothing to give MILLS even a sliver of self-actualization, much less realize its full potential.

standard 14: Decisions about Medical Treatment: LOTT has violated these standards by failing to promote and maintain the ward's health and well being. When not in conflict with PIERCE and JOHNSTON, LOTT simply pushed off her duties onto them, doing little or nothing for MILLS. LOTT has utterly failed to ensure that all reasonably necessary medical care was available to the ward.. Given that LOTT has not even found a cardiologist for a stroke

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patient to see or a pulmonologist for someone with lung disease, LOTT can hardly state that she has complied with this standard.

h. Standard 15: Conflicts of Interest: Though certainly more DEXEL'S doing, LOTT is equally culpable of choosing ancillary and support services, such as medical professionals to perform evaluations of MILLS, who will favor her, rather than someone independent. Time and time again, DEXEL and LOTT chose friends and/or employees of SILVERADO (on its payroll) to perform what should have been independent testing and evaluations of MILLS. Dr. Coo Nguyen and Dr. Stanley Fisher are the first that come to mind. LOTT has not disclosed any such conflicts to the Court, as required, but they undoubtedly exist. Rather than selecting providers who best met MILLS' interest and needs, LOTT and DEXEL chose friends and associates of SILVERADO.

19. The foregoing demonstrates an appalling lack of ethics on the part of GINGER LOTT, making it abundantly clear that she is unfit to serve as guardian of anyone, but certainly MILLS. GINGER LOTT egregiously violated almost half of the minimum standards governing certified guardians—when any one violation could be held sufficient grounds for disciplinary action with the Board. The Court should not tolerate this kind of sloppy, negligent, reckless, malicious behavior. GINGER LOTT should be immediately removed as guardian of the person of WILLIE JO MILLS, incapacitated.

XI. CONCLUSION & PRAYER

20. In conclusion, Applicant, CINDY PIERCE prays that this honorable Judge would grant this Emergency Motion to Remove GINGER LOTT as guardian of the person of WILLIE JO MILLS, based upon the imminent threat of severe harm (including death). GINGER LOTT has proven time and time again her incompetence, laziness, gross neglect, and recklessness where the health of WILLIE JO MILLS is concerned. GINGER LOTT is no longer acting in the best interests of the ward, if she ever was. She is now CLEARLY in damage control mode and more interested in

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covering up her neglect and avoiding the consequences than the well being of WILLIE JO MILLS. APPLICANT prays that this Court immediately remove GINGER LOTT, while there is still time for CINDY AND SHERRY to try to help their mother regain her strength. APPLICANT prays for all other and further relief to which she is justly entitled at law or in equity.

Respectfully submitted,

William R. Hester, Jr.
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Houston, Texas 77060
SBN 09554200
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ASSOCIATE COUNSEL

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CERTIFICATE OF SERVICE

I, CANDICE L SCHWAGER, hereby certify that a true and correct copy of this Emergency Motion to Remove GINGER LOTT was served on all counsel of record this 11th day of December, 2013.

Candice L Schwager
Candice L Schwager

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE COUNTY COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

ORDER GRANTING EMEGENCY MOTION TO REMOVE GINGER LOTT

On the _____ day of December, this Court came to consider APPLICANT, CINDY PIERCE'S EMERGENCY MOTION TO REMOVE GINGER LOTT AS GUARDIAN OF THE PERSON OF WILLIE JO MILLS, an incapacitated person. APPLICANT appeared with counsel. Prior notice to opposing counsel was not possible due to the nature of this emergency because counsel did not complete drafting until the morning of December 5, 2013. After considering the MOTION, supporting evidence and photographs, and any response thereto, the Court finds that this Motion has MERIT and should be GRANTED;

It is therefore held that APPLICANT CINDY PIERCE'S EMERGENCY MOTION TO REMOVE GINGER LOTT IS GRANTED;

It is further ordered, adjudged and decreed that GINGER LOTT shall be dismissed from service in this case effective immediately upon signing of this Order;

It is further ordered, adjudged and decreed that GINGER LOTT shall prepare the required statutory report and file all required documentation within thirty (30) days or as specified in the Temporary Restraining Order.

ALL OTHER RELIEF NOT EXPRESSLY GRANTED HEREIN IS DENIED.

SIGNED THIS _____ DAY OF DECEMBER, 2013.

_____
PRESIDING JUDGE

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE COUNTY COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

NOTICE OF ORAL HEARING

PLEASE TAKE NOTICE than an **ORAL HEARING** on CINDY PIERCE'S MOTION TO REMOVE GINGER LOTT AS GUARDIAN OF THE PERSON OF WILLIE JO MILLS has been scheduled for **Thursday, December 16, 2013 at 1:30 p.m.** in Probate Court Number 4. You are encouraged to attend.

Respectfully,

William R. Hester, Jr.
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Suite 100/115
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SBN 09554200
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ASSOCIATE COUNSEL

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CERTIFICATE OF SERVICE

I, CANDICE L SCHWAGER, hereby certify that a true and correct copy of this NOTICE OF HEARING ON PIERCE'S Emergency Motion to Remove GINGER LOTT was served on all counsel of record this 11th day of December, 2013.

Candice L Schwager
Candice L Schwager

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AMENDED EMERGENCY APPLICATION TEMPORARY GUARDIANSHIP OF THE *PERSON* OF WILLIE JO MILLS BY CINDY PIERCE

COMES NOW, CINDY PIERCE ("APPLICANT") and files this AMENDED EMERGENCY APPLICATION FOR TEMPORARY GUARDIANSHIP OF THE *PERSON* OF WILLIE JO MILLS ("MILLS"), an incapacitated person, pursuant to Section 875 of the Texas Probate Code. Tex. Prob. Code § 875. Contemporaneously herewith, PIERCE filed a Motion to remove current guardian of WILLIE JO MILLS' person, GINGER LOTT, for gross negligence via acts and omissions falling significantly below the minimum standards of care governing certified guardians. LOTT's recklessness has has placed WILLIE JO MILLS' health in danger to an outrageous and unacceptable degree. This is a true emergency in that, the Court's failure to act could very well result in the imminent death of WILLIE JO MILLS—that may otherwise be averted by critical and timely intervention of her daughters. *See Affidavits of Cindy Pierce and Sherry Johnston attesting to the facts alleged in this Amended Emergency Application for Temporary Guardianship of Willie Jo Mills, incapacitated, along with Exhibit 2, photographs of Willie Jo Mills from October 2012 to present to show her decline.*

WILLIE JO MILLS was recently release from the hospital and her health is on an urgent, steep decline in sharp contrast to the health she enjoyed when her daughter, Sherry Johnston was permitted to visit her and care for her daily. CINDY PIERCE visited her mother Wednesday, the 4th of December and was ALARMED at her mother's appearance and LOTT'S continued exhibition of gross neglect. *See Affidavit of Cindy Pierce with Photographs of Willie Jo Mills*. MILLS suffers deep bedsores and a crooked, broken foot that was never adequately treated after being broken at Silverado. SHE IS NOT

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EATING, DRINKING, AND HER SKIN IS DARK, THINK AND TEARS EASILY. She is extremely sick and needs her daughters to provide the care they have provided—when not thwarted by Silverado, Dexel, or Lott. If the Court fails to act, WILLIE JO MILLS may die. This risk is elevated and PIERCE requests an emergency hearing on her application for temporary guardianship of her mother's person. In support of this Emergency application for Temporary Guardianship, Applicant will present shocking evidence, recordings, and photographs of Mrs. Mills to the Court. PIERCE alleges the following:

I. PARTIES

Cindy Pierce (APPLICANT FOR TEMPORARY AND PERMANENT GUARDIAN)
13076 Satcher Lane
Bedias, Texas 77831
281-413-2207

Sherry Johnston (APPLICANT FOR SUCCESSOR PERMANENT GUARDIAN)
1390 CR 331
Cleveland, TX 77327
281-622-1771

Willie Jo Mills ("Ward")
7450 Willowchase Blvd #3
Houston, Texas 77070

Ginger Lott by and through Louis Ditta (CURRENT GUARDIAN OF THE PERSON)
770 South Post Oak Lane, Suite 500
Houston, Texas 77056
Phone - 713-655-1550

Clarinda Comstock (AD LITEM)
1 Riverway #2300
Houston, Texas, 77056
FAX: 713 961-8022

David Dexel, Guardian of Estate of Willie Jo Mills
FAX: 713-527-9379
P.O. Box 66790
Houston, Texas 77266

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II. INTERESTED PERSONS

Larry Mills – disqualified son of ward
3103 Birch Park Lane
Houston, Texas 77073

Gene Arney, Brother of Ward
4203 Little Crest
Houston Texas 77093

Vicki Foster, Sister of Ward
4203 Little Crest
Houston Texas 77093

Faye Cooper, Sister of Ward
3110 Birch Park Lane
Houston Texas 77073

Patricia Cowart, Sister of Ward
13347 Corpus Christi
Houston Texas 77015

III. JURISDICTION

1. Jurisdiction lies in the Harris County, Texas, Statutory Probate Court. Tex. Prob. Code § 607D. The Harris County Statutory Probate Court has exclusive jurisdiction over guardianship WILLIE JO MILLS, as she is subject to a pending guardianship in Harris County and has at all times resided in Harris County, Texas since the guardianship began. Section 875 of the Texas Probate Code permits any interested person to file for guardianship of a disabled adult. CINDY PIERCE is the daughter of WILLIE JO MILLS and seeks emergency temporary guardianship of her disabled mother's person only.

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IV. VENUE

2. Venue is appropriate in Harris County because the ward resides in Harris County, Texas with the Applicant at the time the Guardianship is being filed.

V. FACTS

HISTORY OF THE GUARDIANSHIP

3. WILLIE JO MILLS is the incapacitated mother of Sherry Johnston, Cindy Pierce, and Larry Mills. She is eighty-five years of age, born November 27, 1927 and has been a ward of this Court since 2009. Guardianship was pursued by LARRY MILLS in connection with his attempted conversion of her estate in 2008—thwarted by the diligence of JOHNSTON AND PIERCE, who hired lawyers to secure a court order, freezing the assets of LARRY MILLS for return to the ward. The Judge froze all assets pending the outcome and LARRY MILLS was required to return all money and/or the value of all property taken wrongfully and sold. LARRY is estimated to have taken over $1 million.
4. At the time of the guardianship, Pierce and Johnston had spent more than $30,000 on attorneys' fees to preserve their mother's estate. The siblings considered the issue of whom would serve as guardian. Mills agreed to consent to Pierce or Johnston serving so long as his lawyers' fees from the conversion/breach of fiduciary duty action were paid out of their mother's estate.
5. When Pierce and Johnston refused, Mills refused to consent to either daughter serving as guardian. In an effort to ensure their mother's needs were met while avoiding a prolonged dispute that could cost tens of thousands more in legal fees, PIERCE AND JOHNSTON agreed to waive their right to serve as guardian and permit a professional to be appointed in 2009. This waiver was never intended to forever preclude Johnston and/or Pierce from pursuing guardianship of their mother; but rather, only in 2009. It is hardly res judicata to this application as MILLS suggests.

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6. Johnston and Pierce agreed to the waiver based upon the false assumption that DAVID DEXEL was a professional and would take good care of their mother's person and estate. ***AFTER PIERCE AND JOHNSTON WAIVED the right to serve as guardian***, the Court appointed David Dexel as permanent guardian of the estate and person of WILLIE JO MILLS.
7. CINDY PIERCE AND SHERRY JOHNSTON had high expectations concerning the services of a professional guardian. From 2009-2012, DAVID DEXEL served in an acceptable capacity, with some conflict that was almost always resolved. He never rose to the responsibilities required of a guardian of the person, but PIERCE AND JOHNSTON had some trepidation about becoming adverse to him, given his prior threat that he would move their mother to a facility where they would not find her if they made trouble for him. *See Affidavit of Sherry Johnston.*
8. Over the past year, the family became unable to simply deal with DEXEL'S unacceptable care of their mother because he became an impediment to her receiving appropriate care, tying their hands from acting. DEXEL'S oversight of MILLS has been deplorable, gross neglect, and despicable for a person entrusted with the duties this Court granted him. DEXEL'S inappropriate conduct, evasive, failure to even acknowledge the family's concerns, gross overstepping in his duties as a guardian and outright threats culminated in SHERRY JOHNSTON AND CINDY PIERCE hiring a lawyer.

CONFLICT REACHES ITS BOILING POINT

9. Conflict between DEXEL AND THE FAMILY came to a height in 2012, as WILLIE JO MILLS' health began to decline along with the quality of care she received while at SILVERADO. In the fall of October 2012, Willie Jo Mills ("Willie Jo") contracted a urinary tract infection and pneumonia, mandating that she be hospitalized. When the caregiver, Leslie, refused to take Willie Jo to the hospital in favor of hospice over the vehement objections of the family, SHERRY JOHNSTON physically removed her mother from SILVERADO for an eight-day hospital stay.

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Doctors confirmed Sherry's suspicions that MILLS had a UTI and pneumonia. Consistent with DEXEL'S usual neglect, he did not visit or call WILLIE JO the entire eight days she was hospitalized—nor did GINGER LOTT.

10. The caregiver, Leslie, who refused to hospitalize Willie Jo, left the facility for other employment shortly thereafter as did the administrator, Chris—whom the family worked well with to resolve conflict. Megan Christopher was brought in to run the facility shortly thereafter, with a specialty in *marketing—and focus on money rather than patient care.* In an effort to make a profit in her brief tenure at Silverado, patients have often been denied required staffing ratios, providing for substandard care.

11. Inadequate staffing was the cause of Mrs. Mills falling from her wheelchair in July of 2013, breaking her foot, as well as the bedsores she currently suffers. Christopher's focus is clearly not patient care and one example of this woman's approach to families is a recent incident where Sherry was denied all information concerning her mother by Christopher after being issued a snide comment. **Sherry asked "Is this how you treat all families?" to which Christopher responded, "No. Only you."** Megan made it clear that her interest was not the elderly people she served or their families—which became more and more evident when Sherry Johnston was banned from visiting each time she complained about her mother's care or took a photo to document the neglect. Each time Sherry was banned from visiting her mother or removing her from the premises was preceded Sherry uncovering unacceptable care of MILLS and reporting it. APPLICANT will present evidence of each such ban and the events, which caused it.

12. DAVID DEXEL appreciated SHERRY JOHNSTON being his eyes and ears on the ground and doing his work for him for the past three years so long as their interests were not adverse, as did GINGER LOTT. However, as soon as SILVERADO'S outrageous neglect of Mrs. Mills surfaced and DEXEL'S liability became clear, LOTT, SILVERADO, AND DEXEL instituted various

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procedures designed to prevent the family from seeing what's really going on, including but not limited to:

a. Visitation bans on Sherry, who visited daily and routinely discovered her mother lying in urine or feces, with a UTI, pneumonia, unchanged or unfed by caregivers

b. Refusing to share medical records or permit family members to attend on doctors' appointments with doctors chosen exclusively by Dexel, Lott and Silverado

c. Using physicians to care for Willie Jo that were not independent, but rather, employees of the corporation, Silverado

d. Sudden bans on Sherry from taking photos of her mother (or kicking her out of the facility for doing so) when they had never objected to her taking photographs in the past. [1]

e. Bans on Sherry talking to other residents and/or their families, with whom she had been friends for several years (many of which were instituted by the families, not Sherry).

f. Refusing to permit Johnston or Pierce to remove Willie Jo without three days prior notice;

g. Assigning a "sitter" whose function seemed more to watch the family's visits with their mother than care for Willie Jo, particularly given that the sitter was not permitted to leave the room while they were present;

h. Misrepresentations and evasiveness regarding the status of Willie Jo's health and/or care;

[1] In fact, it was not until Dexel, Lott and Silverado became concerned about their legal liability that the family hit such a brick wall getting information about their mother's care;

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13. This has resulted in the current urgent and very dire situation in which MILLS finds herself, very ill without adequate care, surrounded by individuals who would allow her to die before they face accountability for neglect. At this juncture, GINGER LOTT, DAVID DEXEL, AND SILVERADO personnel are not acting in WILLIE JO MILLS' best interest, but rather, to cover up their own neglect which has resulted in her becoming extremely ill. Willie Jo Mills is dehydrated, not eating, weak, and on the decline fast. She is depressed without her daughter-visiting daily as was the practice of Sherry Johnston to feed her mother, ensure she was changed and had adequate nutrition and fluids. MILLS' health has taken a nose dive and she is in dire need of her daughters' care, since LOTT and others have demonstrated a blasé attitude and/or lukewarm concern. The First Court of Appeals and Supreme Court have stated that "adverse interest" is considered with more emphasis on the person's well being than anything. IT is clear in this matter that LOTT has more interest in covering up neglect and precluding legal liability than maintaining her responsibility to MILLS. For that reason, a Motion to Remove LOTT has been filed contemporaneously herewith. ***However, applicant seeks this emergency hearing because her mother is quite likely to expire before the Court can hold a hearing on the permanent guardianship application without immediate critical intervention.***

14. While the family could deal with DEXEL'S neglect and belligerence so long as they at least had the ability to help their mother by visiting daily to change her and bring fresh squeezed juices and home remedies for her urgent medical care, once DEXEL. LOTT and SILVERADO began acting to protect themselves from liability, rather than care for MILLS and became the impediment to her obtaining appropriate care, the situation became intolerable.

15. DAVID DEXEL could feasibly be said to have set himself up to be insulated from liability, hand picking Clarinda Comstock for recommendation as ad litem, choosing GINGER LOTT to serve under him and succeed him in a secret hearing he intentionally failed to notify APPLICANT'S

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attorney of, choosing the facility and all medical providers, who were not independent, but were paid employees/third party contractors of SILVERADO.

16. For example, the sleep disorder doctor, Dr. Coo Nguyen, assigned to Mrs. Mills care, was selected by DEXEL and employed by SILVERADO. Dr. Stephen Fischer of Methodist is a neurologist also employed by SILVERADO. Despite the fact that Willie Jo has had strokes and is in a dementia facility chosen by DAVID DEXEL, she has not seen a Cardiologist in four years. DEXEL and LOTT knew for four years that MILLS suffered from Chronic Obstructive Pulmonary Disease (COPD) and have not once taken her to see a pulmonologist.

FAMILY DEMANDS FOR WILLIE JO TO BE MOVED

17. Rather than Silverado suddenly demanding that MILLS be moved, SHERRY JOHNSTON AND CINDY PIERCE began demanding that MILLS be moved beginning in March-April of 2013—until the time she be ultimately removed from Silverado. [2] ***WILLIE JO MILLS has suffered a broken foot---which has yet to be even set in a cast, leaving her foot crooked and deformed.*** She sustained multiple bruises of unknown origin and has been dehydrated repeatedly during the past six months. David Dexel has been advised of these problems and has done nothing—but attempt to bar Sherry Johnston from visitation so that she could not see the inadequate care her mother was receiving.

18. After weeks upon weeks of DEXEL "stonewalling" and ignoring requests and urgent calls of the family and their attorney, William R. Hester, Jr., they discovered that DEXEL had "suddenly" filed a Motion to Resign as Guardian on August 30, 2013, scheduling a hearing for the 24th day of September, 2013. Consistent with DEXEL'S (and LOTT"S) repeated failure to notify the family of critical information or permit their involvement in MILLS' medical care and/or visits, DEXEL arranged a secret "ex parte" hearing on his Motion to Resign to intentionally excluding MILLS'

[2] William Hester, Jr., the family's attorney, reiterated this request in multiple communications—to which no response was provided.

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family and lawyer, from attendance. On the 17th of September 2012, without notice to any concerned family member, DEXEL resigned as guardian and GINGER LOTT was appointed guardian of WILLIE JO MILLS' *person only.*

19. ***PIERCE AND JOHNSTON vehemently objects to the appointment of LOTT and pray for her removal. A MOTION TO REMOVE GINGER LOTT has been contemporaneously filed herewith. LOTT has been involved in this case from the inception with DAVID DEXEL and is guilty of most if not all of the same infractions as DEXEL.*** Under no circumstances will PIERCE OR JOHNSTON accept LOTT as their mother's personal guardian. LOTT is blocking access to MILLS' Medical records and refuses to permit CINDY OR SHERRY to attend physician's visits with their mother. She is evasive and keeps them essentially in the dark concerning their mother's "neglect." LOTT is grossly negligent, serving with DEXEL for the past four years—many times in his place. Her neglect while serving as DAVID'S representative and now is gross—sufficient to meet the standard for mandatory removal. *See Motion to Remove*. GINGER LOTT has participated in DEXEL'S neglect and this "change" of guardian was truly in "name only."

20. Pending LOTT's removal, CINDY PIERCE respectfully prays that this Court appoint her Guardian of the person of her mother, WILLIE JO MILLS. The Texas Probate Code ***gives priority*** to CINDY PIERCE to serve as WILLIE JO MILLS' GUARDIAN given their relation as mother/daughter to the Ward, to the extent of qualification. There are absolutely no grounds for disqualification of this emergency application under Section 681 or 642. TEX. PROB. CODE ANN. 642, 681. Based upon the clear "adverse interest" LOTT has with MILLS, she should be removed. LOTT has failed to:

    a. Obtain a cardiologist appointment for MILLS, a stroke patient, in four years

    b. Obtain a pulmonologist appointment for MILLS, a lung disease patient

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2620-15th Ave. Floyd, IA 50435

c. Obtain an air mattress or gel overlay covering for their mother's bed as MILLS suffers deep bed sores

d. Take MILLS to the hospital even though she is not eating or taking in liquids well

21. To cover up her absolute derelict of duty and neglect and that of DEXEL, for whom she filled in frequently during the past several years, LOTT has notified the family that she will share only the information she wants to share about Willie Jo. She has refused requests for status updates and medical records and is evasive to all of Johnston's requests. Johnston has asked for a camera to be placed in the room and for periodic reports and updates concerning their mother's health, weight, eating, and overall condition—which has been ignored or refused. Pursuant to Section 875 of the Texas Probate Code, APPLICANT, CINDY PIERCE, files this emergency application for temporary guardianship of the person of WILLIE JO MILLS. Applicant respectfully prays that the Court grant PIERCE'S Emergency application for Appointment as temporary guardian of the person of WILLIE JO MILLS and for all other relief requested.

VI. SECTION 875 TEMPORARY GUARDIANSHIP

SECTION 875 applies to emergency applications for temporary guardianship and states the following:

> (a) If a court is presented with substantial evidence that a person may be a minor or other incapacitated person, and the court has probable cause to believe that the person or person's estate, or both, requires the immediate appointment of a guardian, the court shall appoint a temporary guardian with limited powers as the circumstances of the case require.
>
> (b) The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order…

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(g) If at the conclusion of the hearing required by Subsection (f)(1) of this section the court determines that the applicant has established that there is substantial evidence that the person is a minor or other incapacitated person, that there is imminent danger that the physical health or safety of the respondent will be seriously impaired, or that the respondent's estate will be seriously damaged or dissipated unless immediate action is taken, the court shall appoint a temporary guardian by written order. The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the respondent against the imminent danger shown.

19. More than sufficient grounds exist to show by substantial evidence that probable cause exists to schedule a hearing on this emergency application for temporary guardianship. In fact, substantial evidence exists that MILLS is in imminent danger by the continued service of GINGER LOTT and that without her removal, MILLS may actually not survive until PIERCE can obtain the required hearings to remove LOTT, DEXEL, LARRY MILLS, and reach the juncture to be sworn in to serve as guardian of the person of Willie Jo Mills.

VII. SECTION 689

20. Though DEXEL AND LOTT did not hesitate to ask WILLIE JO whether she wanted a DNR in effect while allegedly incapacitated, they have not sought her opinion regarding whom she wishes to serve as her guardian. Had they merely asked, they would know that she prefers one of her daughters to do so, not a stranger.

21. While MILLS suffers moderate incapacitation, she has not hesitated to make it known that she desires her daughter, Sherry Johnston or Cindy Pierce, to be guardian of her person and estate. Section 689 of the Probate Code suggests that MILLS' wishes should be given great deference.

22. Section 689 of the Texas Probate Court states "[b]efore appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed

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guardian and, to the extent not inconsistent with other provisions of this chapter, shall give due consideration to the preference indicated by the incapacitated person." Tex. Prob. Code § 689. *Id.* THIS HAS NEVER BEEN DONE AND APPLICANT REQUESTS THAT THE COURT HONOR THE WARD'S PREFERENCE FOR PIERCE.

VIII. STANDING & DISQUALIFICATION, SECTIONS 681 AND 642

23. Larry Mills, David Dexel, and Ginger Lott should all be held barred from serving as guardian or contesting this application for temporary or permanent guardianship by virtue of their clear adverse interest to Willie Jo Mills. The evidence of Larry Mills' financial exploitation is clear in the Court order freezing all of the assets he wrongfully converted from MILLS in 2008. Larry Mills is long believed to be only marginally interested in his mother's well-being. Instead, his interest is in her estate. Were it not so, he would not have taken all of her money and outrageously locked her out of her own home. He is clearly ineligible to apply to serve as guardian or even contest this proceeding, having no standing to do so. Applicant requests that this Court dismiss his contest to her application for temporary and permanent guardianship for lack of standing under Texas Probate Code Section 642.

24. Likewise, neither Ginger Lott nor David Dexel have standing to contest this application for temporary or permanent guardian by virtue of their unmistakable adverse interests to that of Mills' best interest and welfare. Notwithstanding the glaring adverse interests that should deprive LOTT, MILLS, and DEXEL from serving as guardian or even participating in this proceeding, all three are disqualified. Tex. Prob. Code. 681.

25. Section 681 of the Texas Probate Code disqualifies as potential guardians: (2) any person whose conduct is notoriously bad or (7) a person who, because of lack of experience, education, or other good reason, is incapable of properly and prudently managing and controlling the ward or his estate, as well as (8) any person found unsuitable by the Court. Larry Mills, Ginger Lott and David Dexel

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meet all three of these contingencies, rendering them disqualified to serve. In stark contrast stands Cindy Pierce, who has both standing and is qualified amply to serve as guardian of her mother's person and estate.

26. Nevertheless, for purposes of this emergency petition for temporary guardianship, CINDY PIERCE seeks only guardianship of the person of WILLIE JO MILLS. She is qualified to and eligible to receive letters of Guardianship. WILLIE JO MILLS' parents are deceased and she is not married. Her closest living relatives are her children, Sherry Johnston, Cindy Pierce, and Larry Mills. Notice of this proceeding has been served upon WILLIE JO MILLS' living sisters and brothers.

IX. FULL GUARDIANSHIP SOUGHT

27. CINDY PIERCE seeks full temporary guardianship of the Person of WILLIE JO MILLS, with as many rights as the Court will designate to her so that she can appropriately care for her incapacitated mother. A full guardianship is sought, with all rights and duties as described in Section 767 of the Texas Probate Code. TEX. PROB. CODE 767, of the person of WILLIE JO MILLS.

X. DISCOVERY CONTROL PLAN

28. Discovery shall be conducted under Level 2 as defined in the Texas Rules of Civil Procedure.

XI. EMERGENCY APPLICATION UNDER TEXAS PROBATE SECTION 875

29. This Emergency Application for Temporary Guardianship is being filed to modify the guardianship entered without notice to the family designating GINGER LOTT to be guardian of the person of WILLIE JO MILLS on September 17, 2013—in the secret "ex parte" hearing DEXEL arranged to change the guardian without notice to the family or their attorney.

30. Guardianship is required due to WILLIE JO MILLS' documented incapacitation, which is not expected to change. CINDY PIERCE would be the sole guardian of WILLIE JO MILLS' PERSON.

Cindy Pierce ("Applicant')
13076 Satcher Lane
Bedias, Texas 77831

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2016-50355-PROB

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31. Applicant seeks a full Guardianship over the person and estate of WILLIE JO MILLS with all rights and obligations appurtenant thereto. CINDY PIERCE shall further have the duty to care for all requisite needs of WILLIE JO MILLS related to his disability, including the duty to provide food, shelter, clothing, education, and medically necessary services.

32. WILLIE JO MILLS is incapable of voting, operating or obtaining a license to operate a motor vehicle. She requires assistance in all daily activities such as preparing food, bathing, choosing appropriate clothing, brushing his teeth and other hygiene. She is moderately independent in terms of eating by herself and dressing. She must be monitored constantly, which is not expected to change.

33. APPLICANT prays that this Court remove GINGER LOTT as guardian of MILLS' person immediately.

XII. APPOINTMENT OF ATTORNEY AD LITEM AND/OR GUARDIAN AD LITEM

34. CINDY PIERCE files a Motion for Appointment of an Attorney Ad Litem and/or Guardian Ad Litem for the proposed ward, WILLIE JO MILLS, contemporaneously with this Emergency application. Applicant requests that the Court appoint an attorney ad litem and/or guardian ad litem as soon as reasonably practicable for WILLIE JO MILLS. APPLICANT requests the Court appoint an individual to serve in a dual capacity as attorney ad litem and guardian ad litem to conserve resources of the Estate of WILLIE JO MILLS and that such person be an individual who has no connection to this matter previously, the parties, and appointees.

XIII. CONCLUSION & PRAYER

35. Applicant, CINDY PIERCE AND successor applicant, SHERRY JOHNSTON, are qualified to serve as guardian of WILLIE JO MILLS' ESTATE AND PERSON. It is the desire of WILLIE JO MILLS, the proposed ward, to have her daughters designated guardian of her person and estate. For the reasons stated herein, APPLICANTS prays that their emergency application for guardianship be

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granted, upon proof of all required facts at hearing and/or trial and that DAVID DEXEL and GINGER LOTT be immediately dismissed from the respective appointments. Petitioner reserves the right to amend this Emergency application for Guardianship and prays for FULL CINDY PIERCE sees FULL TEMPORARY Guardianship over the person AND ESTATE of WILLIE JO MILLS and for such other and further relief to which he may show herself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CANDICE L SCHWAGER, hereby certify that a true and correct copy of this Amended Emergency Application for Temporary Guardianship and supporting evidence was served on all counsel of record this 11th day of December, 2013 in accordance with the Texas Rules of Civil Procedure and Texas Probate Code.

Candice L Schwager

Candice L Schwager

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 380.624

APPELLATE NO. _____

THE ESTATE OF: WILLIE JO MILLS, AN INCAPACITATED ADULT	) IN THE PROBATE COURT) NUMBER 4 (FOUR) OF) HARRIS COUNTY, TEXAS

* * * * * * * * * * * * * * *

STATUS CONFERENCE

* * * * * * * * * * * * * * *

On the 16th day of December, 2013, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Christine Butts Judge of Probate Court No. 4, held in Houston, Harris County, Texas:



Proceedings reported by Machine Shorthand

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GUARDIAN AD LITEM

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December 16, 2013

PROCEEDINGS

THE COURT: First off, I want to let everyone know that there was a facebook incident a couple of weeks ago before we received any filings where I believe Ms. Schwager, who sent me a friend request - not knowing who she was, I accepted her friend request - and she posted some photos of Willie Jo Mills of some of her foot, her back side. And I think the facebook post said something like she's going to start naming names on Sunday, which has already passed. So, if any of you would like for me to recuse myself based on the fact that I have information regarding this case that's outside of, I guess, the walls of this courthouse, then you may make that request at this time.

MS. SCHWAGER: Judge, may I respond?

THE COURT: Yes.

MS. SCHWAGER: There was no posting of photographs directly on facebook. What it was, was a radio program. And the pictures were up maybe a day, and then they were removed.

We have -- what Mr. Hester and I did not realize was the series of emails regarding Ms. Mills were sent to Sherrie Fox and all of the parties involved when all the conflict began. And the family was trying

to get help. They were just reaching out and writing everybody that can pass everything up to get some help, and they didn't realize that that was not proper protocol. And I think Ms. Fox may have received some communications through August when she did say, you know, "don't write." But there were several months when she was receiving those communications as well.

And, you know, when someone's screaming for help trying to get help and nobody's listening, they may have the tendency to over, you know, to write people -- to write -- I know that when I was fighting for civil rights for my son, I wrote senators, I wrote, you know, Department of Education, I mean, just trying to find anybody who would listen. So, I'm sure that that was the intent. It wasn't improper. And the clients didn't know it was anything they shouldn't do; in fact, David Dexel responded several times and sent communications to Ms. Fox on the same case and same matters.

So, there were all these informal communications going on that really shouldn't have been, you know, and so I just --

THE COURT: Will you speak to the post that you made on facebook? I understand your clients trying to reach out, and I understand people getting

emotional and not understanding legal protocol if they're not a lawyer, but you're a lawyer. And so explain why you friended me and why you posted - whether it was a radio program or whatever. I saw the post. I didn't know what court it was in. I didn't know who you guys were talking about. All I was thinking was, I hope this person isn't the guardian because they've just posted some very sensitive pictures, and they don't have the authority to do that if, in fact, this poor woman is incapacitated.

MS. SCHWAGER: Regarding the friend request, there -- it was -- your name came up on the suggested list. I'm friends with multiple judges, and I know that, you know, a lot of my friends are too. I was involved in the sheriff's campaign --

THE COURT: You're free to be my friend. That's fine --

MS. SCHWAGER: The point is, I didn't post it with the intention of you seeing it, and it was immediately removed. The pictures were immediately removed, and they were replaced by the logo because I realized at that point that I didn't want Harris County or people in Harris County seeing this.

This radio program is international and stuff. It's not, it's not Houston-based. So -- and

it's not something that most people would know about. It's kind of an obscure radio program.

THE COURT: Well, the way that it all played out was, I see these photos one day, and I think to myself --- I don't know that this is in my court. I have no idea. All I'm thinking, like I say, is here's a picture of an elderly woman's back side showing some, you know, obvious bed sores and then a picture of a broken foot. And I'm just thinking, if I were this woman, I would be really upset, you know, if I had capacity, and someone was posting pictures of me on facebook. And so, that was my thought.

Then next day I, get your pleading with the same pictures, and my reaction when I saw Sherrie Fox was, I've seen these pictures before.

But my point is that if anyone wants to recuse me because of this post that I saw on facebook, which was obviously not something you guys knew about, I just want to get it out in the open and let you guys know that this happened. And if anyone seeks to recuse me, then that will be considered.

MS. SCHWAGER: Well, can I also point out that I had forgotten that you were on my list. I run a non profit -- I run two non profits, and I have 1500 members in my "attorneys for kids non profit," and this

one's growing as well. So, this is a community-awareness issue. And like I said, on two notes:

One, I realized that you were on my friend list. It was something that I had forgotten because I have an extensive list of many people I don't even know, it's just other people advocating the same issues, and it was removed. It was promptly removed. And I apologize that you did see that because it was not the intent. The intent was to raise awareness in the community so that others, you know, volunteer, get involved to try to change some of the problems that are in the guardianship program.

THE COURT: Well, I'm happy to be your friend. And if any attorney friends me, as long as, you know, as long as in Texas it's not against ethics, I'm happy to friend them. I don't put anything sensitive on my facebook. But on the other hand, it's unprofessional, even in an advocacy role, to post pictures of someone who -- of whom you're not a guardian and without the guardian's permission. And so it's really wrong on both levels.

And, so I just want to point it out. To me, it's a disclosure issue on my part. And so -- I mean, that's not going to cloud any of my

decision-making going forward, but I did want everybody to know that this had happened and give everyone a right to ask me to recuse myself --

MS. SCHWAGER: I wanted to alert you to something you may or may not know.

This summer, there was a post that went out or emails that went out notifying various people, I think including the ad litem, that their names were on a guardianship abuse website.

My client did not put them on there nor did I or anybody that I know, but they were on there and that alarmed her. So, she sent them the notice that they were on there. And so I think, largely, the perception may have been that she put it there, and a lot of whether or not it was conscious or not, a lot of anger directed towards her which she didn't do it. So, you know, there's a lot of side communications and ex parte issues and emails that have been circulating --

THE COURT: Well, the only ex parte that I'm talking about is with you and me. You're my friend, you posted these pictures, and it relates to this case.

MS. SCHWAGER: I understand. And I apologize. I said it was promptly removed.

THE COURT: Thank you. Okay. And we're here, really, on a status conference, and it's on the

record. I had initially told my staff, let's just kind of have a pow wow in our jury room, but I don't think that that's adequate today. Some of the allegations are very serious that were mentioned in the emergency removal. And so, I'll let you guys address those at this time and then allow the attorney for the guardian to respond, the guardian ad litem to respond, and the attorney for Mary Mills to respond in that order.

But, on the recusal issue, I mean, is there anybody who has -- who wants to say anything?

MR. OSTROM: Hour Honor, we're not going to seek your recusal on behalf of Larry Mills.

MR. DITTA: On behalf of Ms. Lott, we are not seeking your recusal either.

I would like to just mention, in terms of today's status conference, which we were prepared for and not a hearing on removal and temporary guardianship - none of which was noticed properly; but Ms. Lott is here to give the Court a status report on Ms. Mills' condition, and that's why we're here. So, I'm not sure. If we're going to be going as a formal hearing - then we're not prepared for that part.

THE COURT: Okay. So, as the attorney for Ms. Lott, I mean, is there -- how did you envision this status conference would take place? Really, what I

envisioned is that we hear from Ms. Lott and Ms. Comstock and allow them to address the concerns that were outlined in the emergency removal petition.

OPENING REMARKS BY MR. DITTA:

MR. DITTA: And that's my understanding as well, Judge. We have, obviously, very serious allegations from Ms. Johnston and Ms. Pierce. And we'd like to be able to do discovery on those before we have a hearing on those issues.

THE COURT: Okay.

MR. DITTA: And just in terms of -- I know they label everything an emergency. This was originally filed on December 5th. I think it's now December 15. We have yet to be served with a full copy of their temporary restraining order application. In her certificate of service, she said because she just finished it that morning, she wasn't able to effectuate service on anyone. It's now more than 10 days later, and I still have not been served with it. I get multiple copies of things that she has filed on Friday and on Thursday - none of which are set for today.

So, again, I think it's inadequate notice on anything other than a status conference on Ms. Mills' condition.

OPENING REMARKS BY MS. SCHWAGER:

MS. SCHWAGER: Your Honor, I would just respond to that by pointing out that 761, as you know, permits the Court to remove a guardian on some motions without notice; and in fact, on September 17, that's precisely what happened - was Mr. Dexel was resigned in favor of Ms. Lott being appointed. We were not provided notice of that, and there was no emergency. There was no, you know, that was disclosed, at least, there was no rationale for why that had to be, you know, done so hastily and the family not notified the next time. They were more than aware that Mr. Hester had represented this family since June.

The reason the application was not filed until October was we were trying to come to an agreement. We were hoping that these people, in good faith, would understand that, that the family now desire to take guardianship. And this -- the relationship, as you can see, has so soured that, you know, I no longer think that this is in Ms. Mills' best interest, period, to have these individuals involved.

And contrary to -- you know, Mr. Ditta's had more than enough time to respond to what, essentially, was the same allegations in several different motions, and he's not responded. In fact, Mr.

Mills has kind of taken the liberty of running to his defense and responding for him. But it is an emergency. He's chided me for calling them emergency motions. And, in fact, we had this set for hearing last week, and it had to be reset because one of the other attorneys doesn't make any less an emergency.

In fact, we have photographs from, I believe it was just last weekend, where in the midst of all these allegations, they drop Ms. Mills, black both her eyes. She's got a huge knot on her head. Her arm is covered from here -- from the wrist to the elbow with bandages.

So, the abuse and neglect is continuing. And it's pretty outrageous that someone who got a broken leg, be going through an emergency application for TRO and then be dropped and then have two black eyes. And we've got the photographs to show you that. So, it is an emergency.

And I believe under Section 761, he's had more than adequate time to know what allegations are.

We filed an application for temporary guardianship in October, and it's now December.

THE COURT: Well, I think he's just complaining about service, and I think he's entitled.

MS. SCHWAGER: He's had service of every

document. And I believe that I also served him with a TRO. The Court forwarded the TRO to him well over a week ago. So, he's been -- he's had actual notice of it. And as I said, I have fax confirmations. I don't have them with me.

But I got this nasty email this weekend about how, you know, insinuating that this is not an emergency and that I shouldn't be sending him all these faxes, issues with text file but, you know, long story. But I'm not trying to harass or overburden him; I'm trying to give him notice, and he complains when I do.

THE COURT: Okay. Well, I think, you know, these are all side issues. We are concerned about Ms. Mills, and that's why we're here today. And what Mr. Ditta has suggested to address our concerns is allow for Ms. Lott to address some of the allegations that you guys have made and give us a status report as to Ms. Mills' condition. And I've envisioned Ms. Comsctock also weighing in on the allegations and addressing them as well.

Is there anything in addition to that that you guys envision happening at this status conference?

MS. SCHWAGER: We -- you know, I am perfectly fine with setting the three-days' notice even though we weren't provided that same courtesy and it was

no emergency.

You know, my position is that Mr. Dexel didn't want to give the family a chance to file their application, and that's why it was purposeful to not provide notice to us and so that they can get in, appoint Ms. Lott and make it difficult for us to remove her when she never should have been appointed. The only reason that Mr. Dexel was appointed four years ago was because Ms. Pierce and Ms. Johnston executed waivers. And we've presented -- we have a position of that waiver signed and notarized. So, they do not waive their rights. So --

THE COURT: One of the reasons why -- that wasn't the only reason that they signed a waiver. I mean, they had a conflict with their brother.

MS. SCHWAGER: The conflict was because their brother took control of the mother's estate and converted her assets, a million dollars to their benefit. And they had -- a judge had to freeze his accounts to get the funds back.

OPENING REMARKS BY MR. OSTROM:

MR. OSTROM: Your Honor, we're now far afield of --

MS. SCHWAGER: No, we're not --

MR. OSTROM: -- what we're trying to be --

I mean, I think we're rotting. Let's hear from the guardian's side because we have received voluminous emails. We know what their allegations are or facts. We know what their allegations are, but I don't think we've heard, and Larry hasn't heard, this Court hasn't heard, Clarinda's position and/or Ms. Lott's position as it relates to those allegations. So, I think that's what we need to start with.

THE COURT: Is there -- so, I'll go back to my original question:

Is there anything that you envision happening at this hearing besides hearing from Ms. Lott and Ms. Comstock?

MS. SCHWAGER: Well, I would like to -- obviously, since we filed the motions that we filed, we filed a TRO and I would like -- you know, I know that they've been read. I don't want to rehash everything that's in there, but I would like to hit the high points.

I'd also like to move the Court to - and I'm sure this is probably what is planned on any way - to keep it focused on Ms. Mills and keep the focus on the fact that the Applicant, Cindy Pierce, is not Sherry Johnston. I anticipate that their defense is going to be an offense against Sherry Johnston. She's not the

Applicant. So, it's both the relevance --

THE COURT: Right. Well, we're not hearing, we're not hearing the TRO. And we're not hearing -- we're just trying to get a status on Ms. Mills and keep, like you say, keep the focus on Ms. Mills and address some of the allegations. You're not here to defend what you filed, and they're not here, necessarily, to attack it. This is a status conference. We want to know that Ms. Mills is okay, and we want to make sure that something doesn't hap -- that something -- that we don't need to do something immediately. And so to me, that's the question that I have that I'm supposed to answer today:

Is Ms. Mills okay? If she's okay, then we will wait -- there's no raising hands in court. You've got an attorney here.

UNIDENTIFIED WITNESS: I'm sorry.

THE COURT: So... I'm sorry, I lost my train of thought.

My question is -- I have just one question and that is --

MS. SCHWAGER: What I envision?

THE COURT: No. No. No.

For me, the question to answer today is, is Ms. Mills okay? If she's okay, it's no immediate

action is required, then you guys can move forward with any action to remove Ms. Lott that you wish, but that will have to be done in a formal process.

If Ms. Mills is not okay, if it requires immediate action on my part, then I'll need to decide what action to take. And, so that's really the focus, you know -- that's the focus that I concluded before I came out that would be appropriate for our status conference.

MS. SCHWAGER: Well, then I feel that, at the minimum, Sherry -- and we can keep it brief, Cindy Pierce and possibly the caregiver who's here, to clarify anything that the Court would like to ask and also to provide her perspective from caring for her, you know, every day, you know, 10-hour shifts, I believe, such as working and what she saw and the specific allegations that have already been refuted by Mr. Mills.

THE COURT: Okay.

MS. SCHWAGER: They're going to testify she's not okay.

THE COURT: Right. Right. Then let's go forward. We'll go ahead and hear from the folks that you want me to hear, and then we'll hear a response from Ms. Lott and Ms. Comstock; how does that sound?

MR. DITTA: Yes.

THE COURT: Okay.

MS. SCHWAGER: I'd like to call Sherry Johnston.

(Witness sworn)

SHERRY JOHNSTON

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SCHWAGER:

Q. Hi, Sherry. I want to start with your observations since -- the relevant time period is, I believe, since, you know, since she broke her leg. But your observations, as a brief, which make you believe that your mother is in imminent danger and in need of assistance or else she may pass and what your observations have been.

A. Well, Candice, in my -- whenever my visitation was revoked, May 16th, I was -- I always went every day to see Mother, spent numerous hours with her. And any caregiver up there would tell you that, even the administrative staff that was there in the past, the new staff doesn't even know me, doesn't even know my history, but I would eat with Mother every day, and I would make sure that she was cleaned and changed and that she was in, generally, good health. And if I saw a problem, I'd always bring it to the staff, and we would

discuss it, and we would work out a solution and continue on. And that worked out pretty good for several years until last year, all this stuff started changing. But we had a problem, and we worked through this problem pretty much so.

But in May, when I walked in, May the 6th -- 16th, I was going to have sup -- or lunch with Mother. And people had met me at the door and started hugging my neck and told me how sorry they were for me. And everybody was about to cry, and I asked them what was going on, and they told me that they wasn't going to tell me; they couldn't tell me, you know. And they just had all those tears in their eyes.

And my first response is something had happened to Mother, you know. I didn't know. So, I went to her room, and it had been cleaned out like she had died, and I was upset. I wasn't screaming or nothing. I was extremely concerned. And I went to the nurse and asked what was going on, and she said, "Well Mother's fine." I said, "Well, where is she at?" You know, nobody would tell me.

And finally after about 20 minutes of trying to find my mother, the nurse, Amanda, told me that she was on the other side and that I would have to speak to Megan, the new administrator. I said, "Okay."

So, after about 20 minutes later, she had been feeding some other residents because they're always short-handed all the time. So, she called me in to her office, and I asked her what was going on, and she just, flat, told me that it was a matter between her and David and they had discussed this and that they didn't have to discuss anything with me - that I was not her legal guardian. And she turned her back, and that was the end of that conversation.

And I went back out and stayed with the residents for another two and a half hours when they had a party. And I wasn't rude. I was not interfering with nobody. As a matter of fact, there was a resident's husband that was dying at that particular time, and I danced with her and told her how sorry I was that her husband was dying and that we loved her.

So, that's the kind of relationship we had at Silverado.

So, what happened was when I got my visitation revoked, you know, I couldn't see Mother. There was nobody there to make sure that Mother was okay. And David wouldn't discuss things with me. So, I was on vacation, and I got a phone call from Silverado saying Momma's leg was broke, you know. And then they let me in for two days saying that I was all upset and

creating problems, which I wasn't, and then they revoked my visitation again.

And during this whole process, Ginger told me one time when Mother had a doctor's appointment, but I had to fish it out of her. I had to investigate. I had to follow them to find out where they're taking Mother. And when they did take Mother to the doctor, the doctor told them to leave the boot on her leg, and Silverado would take it off at night time.

Q. Right. So, what are the instances of neglect that you specifically witnessed with your mother when you would go visit? And what are the problems that you saw?

A. Well, when I was at Silverado, all I got to see Momma, like, three weeks since May, three and a half/four weeks. And every time I'd get in there, and I would expose something, they would revoke my visitation. It's like a slap on my hand for doing anything, for bringing this to their attention.

And when -- I told David that if he didn't -- there was nobody there to take care of Mother. So, I told him, you know, we wanted to move her, and he said, "Well, go look for another place." And we did look for another place.

And then they told us that, you know, it

would be too dramatic for Mother to move her so she would stay there. And I told him I was going to take him to court and have him removed off Mother's case.

Q. What I'm trying to get at is what did you see -- what circumstances did you see your mother in that began to alarm you?

A. Well, whenever she broke her leg; and then, again, in August, they put that Exelon patch on Momma's back without telling us.

The resident picked Momma up on the 25th of July - and the caregiver was there, Nicole was there, and Marqueeta [sic] that works there - dropped Mother on the bed. She fell on top of her and twisted her knee. I witnessed that, and I signed the first report, incident report.

Mother, she was like a zombie. She couldn't understand us. She lost weight. Her skin color started turning back the way it did back in September, it was getting bloody-looking. She lost her appetite, she was losing weight, and I was concerned. That was the beginning of the things that I saw.

Q. So, you know, is it fair to say your mom was --

A. She was declining.

Q. -- on a decline?

A. Yeah, she was healthy and beautiful May the

16th when they decided to have an emergency move.

And on the 17th of May, they made her dress like a homeless person to get me upset, you know. And then from then it was like they'd dress her -- she hasn't went to the beauty shop but one time since May until she went to The Hampton that I know of.

Q. How many times has she been injured while in the care of either Silverado or Hampton?

A. Well, she was -- in 2012, they would not take her to the hospital for urinary tract infection. She ended up with pneumonia. They kept her eight days.

Silverado didn't take them to the hospital; I took her to the hospital. I took her to the emergency room, and Larry relieved me then he left her at 6:30 in the emergency room after she'd been admitted and went home. And my daughter spent the night with her there. And our aunt, Billie, spent the next day with her, and then I camped out for almost eight days with her.

Then the following month -- following Monday, she got out. We had an emergency meeting to where they were trying to put Momma in hospice again.

So, that was, that was the eye-awakener.

But she broke her leg; she's had pneumonia; she's had a urinary tract infection. She

went to Dr. Stanley without us knowing about it. Yeah, I had this Exelon patch. And he works for Silverado Senior Living. So, all these people were, I felt like, were, you know, they were just covering for each other, and Momma's getting hurt more. She ended up going to Brookdale or y'all know, The Hampton. You know, and her room was dirty. They haven't hung all the stuff in her room. I mean, they got her on a bland diet when she's used to eating hamburgers and having a good time, and they let me do nothing in there to even juice her or even give her a breathing treatment that nobody had a problem with and now she's had pneumonia. She's got out of the hospital with pneumonia. Now she's been -- fell in a wheel chair. She's had her head all banged up.

So, those are the ones that I've seen.

Q. What about, you know, as far as, you noticed some physical injuries on her, you know, different areas of her body; can you describe what you've seen.

A. Well, she's had her broke leg. You know, it happened. It's horrible. The doctor said it wasn't worth setting, and they didn't put a cast on it - they just put a boot. And Silverado would take the boot off at night time and not put it back on until the daytime. And the doctor's orders said to leave the boot on 24 hours a day and only take it off during showers.

And I asked Ms. Lott to give me the information. She said she would, but she didn't do it; so I went myself to the doctor's office and got it.

Q. Did you feel any of this time like there should have been second opinions?

A. Absolutely. We've asked Mr. Dexel for, ever since this all got started in 2007, that we wanted to have other doctors to be involved in this. And we've asked him for a new -- for a primary care physician that wasn't associated with Silverado, and he just left us all.

Q. And she's a stroke patient. I mean, you know -- you've never denied that she had a stroke, have you?

A. No, ma'am.

Q. Wasn't your position that it was the extent of her disability and the extent which she was impaired rather than saying that she didn't have one at all?

A. Momma had a stroke in 2007. I think it was my birthday, right about my birthday. Mother was partially living all by herself, and we would pick her up on weekends, on my days off, and she'd come stay with me. And we would rotate Mother around and try to get her some more stable care 'cause we knew Mother was getting older. And she had fell a couple times at our house.

So, we were trying to get her into a situation where we could feel safe that Momma would be safe, and she would have her freedoms, you know, and she could be independent and the least amount of restraint on her. We never dreamed we'd end up in guardianship court.

Q. What effect did you notice? After they gave her the Exelon patch, did you notice changes in her and what were those changes?

A. When they gave her the Exelon patch, Momma was like a zombie. I mean, she'd just look and stare at you. You know, she didn't want to eat. You know, she started losing weight. And her skin went back to turning dark 'cause she had twitches in her muscles. And those are the side effects of the Exelon patch. Those are the ones that I sent to David - and I highlighted to David and to Ginger and everybody else that would take an email - that these side effects were happening, and he never would even return my emails.

Q. In complaining about some treatments that they were giving her, rather than -- you weren't trying to act like a physician --

A. No, ma'am.

Q. -- is that correct? What was your intent?

A. My intent was to make sure that Momma was safe. My whole intent this whole time, my whole adult life, is

to make sure that my mother was never taken advantage of. And when our daddy died, he told us to take care of our mother and don't let nobody take advantage of her, and I took that really serious. Because God tells us to honor our parents, and there are people out there that will take advantage of elderly people.

Q. Your mother, one of the things you just mentioned about her skin and her spots, she went -- what you observed -- discuss what you observed regarding her skin and how it was, at one point in time, what you were doing or what they were doing and how it changed.

A. Well when Momma had her -- come out of the hospital in 2012, she was really sick. She didn't eat. She lost down to 107 pounds. And Silverado kept emphasizing that they wanted to put Mother on the other side with more care to have another set of eyes.

And we had a family meeting, and we told Mr. Dexel that Silverado was already short of staff and that we felt like everybody was leaving Silverado. They were even -- they were leaving because they was unhappy with the care that was there or they were going to the other side to be put on hospice, and it wasn't about two and a half/three weeks later, they would die. And I was alarmed at this, and I told David about this, and we told them that they were lazy and that they would not

hire help to fill in the cracks at Silverado and they used Medicare as a crutch to get more money and not address their issues and no staff.

Q. Okay. What I was getting at, as far as her skin, at one point her skin looked really well?

A. Well, in 2012, it was black and blue, and I have pictures of her skin that was black and blue and she was bandaged all up. And they allowed for me - I think it was November or December - to let me juice her with -- I bought a NutriBullet. And all I did was take tomatoes and bell peppers and stuff, make juice out of them; poured them in a bottle. And I would make a fruit juice with apples and peaches and pears and plums or whatever and then made a juice out of it. And I would start juicing her, let her drink it. They were liquids, and she loved them. She would drink three or four of them a day.

And then the next I knew that her skin was started shedding. And next thing I knew, in 2012, Momma's skin, she didn't even have skin - it was like seran wrap. You could see inside where her meat and stuff, what little bit of meat she had because she didn't have any collagen in her skin. And what started happening was, in 2012, it started to repair itself. And you could see the color come back to Momma's skin,

and you could see all this stuff, black and blue, that was already started going down because new skin was being built and was going down her leg - it was beautiful new skin.

Q. And you -- you provided pictures of the occasions -- the nine pictures that you provided to the Court, in the exhibits that were provided, would show how she looked during the time period where you were aggressively helping feed her and juice her and bring new life to her?

A. Yeah. I never tried to play doctor. If Momma would eat food, I mean, it's better to eat fresh food than it is processed, you know, institutional food. And Mother doesn't like chicken. And she would drink apples and peaches and pears and plums. But she ate food, too, at Silverado. You know, we've got pictures of her eating shrimp and going to the parties and eating barbecue and having a few little drinks along the way. I mean, the juice wasn't to take away from her meal - it was just to supplement her if she wanted something to drink, which was nutritious. It didn't have all the sugar and stuff in it, and it was good for her.

Q. And they, the facility, permitted you to serve that to her and actually steward it for you?

A. That's correct; yes, ma'am. Nobody opposed

what I was doing or see any problem with it.

Q. And the nebulizer, did they provide the machine for you?

A. Yes, they provided the nebulizer machine, and I would get the saline solution that I'd give her from the nurses. They had left me viles. They'd give me three or four of them, and I would crack them open, put them in there, and I'd give her the breathing treatments. And, Nicole, the caregiver, she gave them, you know. Silverado's staff gave them. It was no -- I mean, it wasn't no drugs or nothing. It was like a nasal, you know, cleanse - that's all it was.

Q. Did you notice that -- well, what was it that caused the facility or the guardian to warn -- to advise you that you could no longer provide the things for your mom?

A. Well, Silverado never did say I could. But when Ms. Lott took over possession of Mother, or was awarded guardianship over her, the first thing she sent out, number one, she was not going to share information with us or that Momma's going to be moving to The Hampton and that she and she alone is going to be the only one that's going to go to the doctor with Mother; and she would share what she sees fit to share with us - I'm paraphrasing this - and that we were not allowed to

go to the doctor with her and that she hopes that she won't get evicted from this place, and she would be -- live out the rest of her days there at The Hampton.

Q. And rather than being evicted, you began to ask David to move her --

A. I asked David to move Mother back in March of last year.

In January, I started emailing him. And I have emails where I sent him letters telling him about how concerned I was that people were getting sick and they were dying. There was like five people died in one month. And I think February, it was, or March, Mother's roommate that had a UTI that - I'm not a doctor, but I know it went a long time - that didn't get treated. And they would double-diaper flow [sic] while she was there. And I caught them double-diaping [sic] Mother. And I told David about it.

So, all this wasn't a secret. And I told David how concerned I was that we needed to do something, you know. And I told him, you know, I just kept telling him over and over, "I'm concerned about this. We need to do something."

And, finally, I think it was in March, I called Silverado Senior Living and filed a complaint against them. And that was in, I think, March or April.

Then May, where they had a family meeting in March which was conducted without the family even being there or even being a phone call, you know, hey, we were having -- they didn't make it later; they made it two hours earlier. So, they done had their meeting - David did and the administrator or whoever was in this meeting - and whatever they discussed, we don't know because I've asked for minutes. I haven't got -- received anything.

Q. So, the guardian's practice, up to this point, particularly once you started complaining and your mother's health declined, it was to conceal and be evasive as to information and appointments; is that was your -- was that your experience?

A. Well, talking about David - the only time he really talked to me or do anything was that Friday evening when they called the police department on me and told them I had a gun inside the residence. And I didn't even know that was until I got the police report.

But that next Monday morning, David called me during the day time when I was at work asking me to come back up there, come by myself. And him and Megan was going to sit down and talk to me about getting my visitation reestablished, and I told them, "I'm not going to show up unless I had me some representation."

And I wanted Cindy and I wanted Larry to be there at that particular time.

And he kept sending me back emails and voicemails saying, "No, just come by yourself. We need to iron this out."

Then four days later, I got the police report, and they reported I had a gun. You didn't see me going up there, you know, knowing that we got all this hostility. They say, "Call the cops. There she is. She's the one that had the gun." I could see that happening.

Q. When you made complaints, did they do anything to rectify the problem or did they tend to punish you?

A. No. No. They never discussed anything with me. When they had a problem, Megan would email David, "we have this problem," and they would discuss it back and forth, "well, we can't have this problem. We've got to revoke her visitation."

Q. Did you feel like most of their focus has been on keeping you quiet or keeping you away rather than take care of your mother?

A. Absolutely. I mean, if they took that much energy and put that much love and care to Mother and let us all communicate in a care-giving facility and work together, this could have been a great arrangement. But

especially in March and April this year, this went so south. And all I wanted to do is let Momma be happy, let her have her freedom, and let us enjoy her and keep her safe and keep her healthy.

Q. The skin, since December, the times where you haven't been evicted and you've seen your mother, what's concerned you about her skin or appearance?

A. What concerned me, number one, that she wasn't as coherent as she was. That really concerned me. I didn't know why because nobody shared any information. I had asked and asked and asked and asked; and finally, David gave me some medical records that Silverado had, and they were, they were -- that's another story. But, you know, they had gave me all of Momma's medical records and, you know... I forgot what you was trying to ask me.

Q. Well, I was just saying, the times that you visited your mom since the summer, and you've seen the decline that you discussed, what are specific things on her body or in her physical appearance that you witnessed?

A. Oh, okay.

Well, I didn't know if she had bed -- when she went over on May the 17 -- 16th, Momma had no bed sores. Momma was clean. I took pictures of her that

night. I rolled her sleeves all up. Momma -- and I got pictures. She's got beautiful skin. She was happy. She went to a party. I pulled her legs up. Took pictures of her legs and nothing.

And then I go back over where she looks like she's sad, she's depressed, she hasn't slept, and her arms are all banged up. She's got skin tears on her arms, she's got skin tears on her legs, she's got banging on her legs. Her foot's broke. She's got a cast that's put on her upside down half the time, and they're taking if off half the time. The other foot gets a cast on it.

Then she goes to The Hampton. Then I find out she's got bed sores. And then she has a knot -- scratches all on her arms. She's got pneumonia. And now her skin looks as bad, almost, as it did September last year.

Q. And did you also notice that she stopped eating and drinking?

A. Absolutely. Momma's lost weight. I don't care what they say.

The week before they moved Mother, I weighed Mother; and Mother weighed a hundred -- I think it was 172 pounds, counting her wheelchair, and that's 49 pounds. So, if you take that and subtract that,

that's what she weighed.

Q. You were -- she recently had her 86th birthday over the Thanksgiving holiday right around that time; were you still banned during that period?

A. Yes. I asked Ginger what was going on - why was I banned? She told me that I was scrubbing Mother's behind with a wash rag which is not true. I have that audio recorded.

And the caregiver, Raylene -- Momma had pooped on herself. She made a big mess. She was watching The Family Feud. And the caregivers were feeding everybody at lunch time, and Momma was in bed. And they wasn't going to come 'til after lunch. So, I decided I was going to change Mother. No big deal. And so I put her diaper loose. And the stuff's everywhere. So, I asked Raylene to give me the wipes, and she gives me the wipes. And she gets through. She's still watching The Family Feud. And I get her cleaned all up. I did have a wash rag, and I put water on it. And she has a body shampoo that she uses, and I just patted her little behind. And if I would have hurt her, you would have heard in on the recording, which I can produce that recording if you want to.

But I cleaned it up and padded it and saw what was there in those pictures, you could see what I

did. Wasn't roughing Mother. And I suggested let the air hit it for a little bit. And the caregiver came in and wanted to give Mother a breathing treatment. And I asked her could she wait about 10 minutes, and she said, "No, it's 1:00." I said, "Well, okay."

So, she comes in. The lady sets up the breathing treatment. We pick Momma up, and she goes, "Oh, what's that?" And that's when Raylene says, "Oh, that's her bed sores that they had been treating. A nurse comes in twice a week and doctors those bed sores," which I didn't know about that. You know, so I saw this, and I took a picture of it, you know.

Q. Was there ever a time where the guardian or the care -- had the guardian provided reports to you regarding how your mother was doing or did you have to find out all this information out yourself?

A. Well, Ginger and David never said that, you know, your mother's going to be going to the doctor. We're having some indication she may be having some pneumonia problems or she -- we want to go get her double-checked to make sure that she's okay. The only thing I got is they would wheel Momma to this X-ray guy and then come back and say her lungs is clean. That's all I heard. I never heard any doctors' reports.

But I did go with Ginger to the doctor,

the chiropractor, and we talked to him. And he said that she looked okay considering her age and come back in four weeks, basically.

And when they took her to Mr. Fisher, she never once said that, we're going to take your mother to the doctor or she's got an appointment or nothing. I just walked in and found this thing on her back and Momma's looking like a zombie. When she started looking like a zombie to me, I took pictures of her.

Q. You took -- you mentioned the incident where, at least on one occasion, you felt like they were dishonest in such a way with your mom, you know, intentionally to try to not advise you; can you describe that?

A. Well Cindy -- we was told that Momma had a doctor's appointment, and we assumed she would be going back to the bone doctor. And so Cindy went with them, and Kim was the driver. I think Kim was the driver. And they went off into Kingwood somewhere in the opposite direction. And Cindy asked what was going, and I said -- well, Kim said, "Well, I don't really know who the doctor was." So, they called Ginger. I think they called Ginger. And Ginger said she's at some other doctors. So, Cindy didn't get to go to the doctor with her, but it was rescheduled.

And the next time she went to the doctor, and nobody called and told me, Ms. Johnston, your mother's going to the doctor. I set there and watched them. And they got my momma, put her in the vehicle, took her around the block, and I walked in on Ginger and them, and they were shocked I showed up.

Q. Where was this at?

A. At Dr. Criswell, the foot doctor.

Q. Okay. So, throughout the guardianship, were there times when they reported to you on her health and then they stopped or was it always just no information?

THE COURT: Ms. Schwager, I'm going to need to stop you. I mean, this is an emergen -- you called this as an emergency, and I've got -- right now, this is what I think:

That this emergency is because Ms. Mills is not coherent or she's not as coherent as she used to be. She's sad and depressed. She's got skin tears on her arms and legs; her foot is broken, and the doctor has said it's not worth setting. She had -- and they haven't gotten a second opinion on that; that she has bed sores; she's suffering from pneumonia; and she has scratches on her arms and she's lost weight.

Are there any other things that you want us to know about the condition of Ms. Mills at this

moment?

MS. SCHWAGER: I believe the most significant we've brought up is, and the most urgent, which can lead to her decline, she's not taking insufficient fluids and food.

THE COURT: Okay.

Q. (BY MS. SCHWAGER) Is that your --

A. That and also that Ms. Ginger Lott, they -- the night they took her to the emergency room, I got an email. She has my phone number. And I felt like she should have the decency and the courtesy to call the family instead of just email us when something is going on with Mother.

Q. Your fear is --

A. My fear is she don't share nothing with us, and she could care less what happens to Mother. And I feel like my mother's life is in danger --

Q. Right.

A. -- and she needs to be out of there.

Q. And nobody's sharing information --

A. That's right.

Q. -- to help you understand --

A. That's right.

Q. -- what's going on?

A. That's right.

Q. Okay.

A. That's what I see happening.

Q. And you've asked for your visitation to be reinstated --

A. Yes.

Q. -- to help her?

A. Yes. "Cause nobody says nothing.

Q. Right. Okay.

THE COURT: Just to make it clear.

You've asked for not only visitation but you've also asked for removal?

THE WITNESS: Yes.

MS. SCHWAGER: Yes. Well, I've asked for the visitation pending this Court's decision to remove.

THE COURT: I see. Well, you asked for immediate removal.

MS. SCHWAGER: Yeah, for today.

THE COURT: Okay. Anything else? Do any of the attorneys have any questions for Ms. Johnston?

MR. DITTA: Your Honor, I just have a couple.

THE COURT: Sure.

MR. DITTA: And I may need to move this plant just so I can see.

THE COURT: You make yourself at home.

CROSS EXAMINATION

BY MR. DITTA:

Q. Ms. Johnston, do you know when Ms. Ginger Lott was appointed as the successor guardian of the person of your mother?

A. It was September the 18th of -- 17th or 18th, I believe, of this year.

Q. So, most of your testimony that I've heard today centers around what happened between -- well, prior to September 2013; is that right?

A. May I say something?

THE WITNESS: Judge, that is correct; but also, Ms. Lott has been associated with David Dexel since 2010 that I know of. So, she knows our mother and how compassionate I am to our mother and how nothing goes on with our mother that we're not involved, or at least I'm not involved. And I told David and them that I am Momma's eyes and ears on the ground. And if something is not right, I'm going to tell them something is not right. And you can take my word as gospel - something that's not right 'cause I don't cause trouble up there just to be causing trouble.

And the thing about it is, when Ms. Lott knew the circumstances that was going on this whole year, she participated in all this stuff that was going

on, and I felt like she should -- the Court should not even have looked at her application as a guardian -- successor-guardian because the Court knew what was going on, and I felt like that that should have never happened.

Q. (BY MR. DITTA) When was the last time you saw your mother?

A. She was at the hospital, and I believe it was November the 13th, I think it was. I work night shift, so I kind of get my days mixed up a little bit. The day before she left to go back to The Hampton.

Q. Almost a month ago; is that right?

A. Yes, sir.

Q. You mentioned several times about your visitation being revoked prior to Ms. Lott's appointment.

How many tines has your visitation been revoked by either a care facility or the prior guardian?

A. My visitation was revoked on -- from Silverado Senior Living, on May the 17th because David -- I told David Dexel that I had no confidence in Silverado Senior Living and the way that he's acting, I didn't have much more in him and that if he didn't move her, I was going to have him removed off Momma's case.

He told me that I couldn't move him, and I

didn't have the authority. I said, "No, but the Court does."

And that was whenever they called the police department, had me -- I left. I mean, I didn't cause any trouble. I left because I didn't want any trouble.

Q. And, again, how many times was your visitation revoked? You never answered the question.

A. June the 21st, the day after Mother went to the bone doctor, it was revoked. And August the 30th, it was revoked, I think it was, and then November with Ginger.

Q. How many doctors' appointments have you attended with Ms. Lott?

A. I attended two with Ms. Lott. The first on the 20 -- I mean, on the 21st or the 20th, she went. She called and told me that I could go, and I told her that Silverado said I couldn't go --

Q. The 20th of which month?

A. June.

And I went to Mr. Criswell's office. I rode with him on the bus and got there.

And then on the 21st, it was revoked.

And then I walked in, I think it was July, they took her in a van, and my daughter just dropped me

off. I walked in. And those were only two that I've been to.

I was only invited to one.

Q. And your testimony, Ms. Johnston, is that Ms. Lott does not share any of your mother's medical information with you --

A. No.

Q. -- since her appointment; is that your testimony?

A. I haven't shared -- she hasn't shared anything other than the fact "Mother is doing fine" and "I'll give you an update."

Q. Has she given you an update?

A. I don't know what you would consider "update." "Mother's going to The Hampton." "Your visitation is revoked." I mean, to me, an update would be like, your mother went to the doctor, and they found pneumonia. This is what we're going to do to treat her. This is our protocol. And what is your input? I mean, do you have any ideals? To me, that would be what I would call letting me know what's going on. She knows that.

Q. And it's your testimony that she has not communicated with you, either, verbally or by email or -- is that your testimony?

A. She doesn't return my emails. She only emails

when she sees fit like, "Your mother's coming home" and my visitation has been revoked.

Q. Ms. Johnston, what was the purpose of you taking photographs of your mother's wound as you were cleaning it?

A. Because, number one, she had bed sores. And if you went into a nursing home, and you're paying someone 7, 8 thousand dollars a month and paying caregivers 25 bucks an hour to take care of your mother, and you're paying 15, 16, 20,000 dollars a month, your mother should be looking like the First Lady.

I come in there, Momma's dirty. And her -- she's don't -- she can't sit in her wheelchair. She can't get up. The caregiver tells us that she can't get out of bed, that she's got bed sores. I want to see what's wrong with my mother. And I looked and I seen this and I took a picture of it. It's against the law to have bed sores. And nobody addresses anything around here. You ask them to get help. What they do - they kick you out. That's why I took the picture.

Q. Ms. Johnston, did you, did you have or did anyone tell you that the doctors -- your mother's doctors had authorized you to bring hamburgers and juices from outside of the facility?

A. There was a note. I have a picture of the

note. It was on Mother's wall; it said this:

That the only thing Momma had -- would have to have thickened water or juices and that her meal was to be bite-size, sugar-cube-size. That was it. And she had to be at a 90-degree angle to feed her. It's all it said on that piece of paper.

Nobody came to me and told me, your mother cannot have a hamburger. Your mother cannot have a Coke. Your mother can't have this.

My mother eats hamburgers, and she eats union rings.

She took a swallow test at the hospital, at the Methodist Hospital, she passed it with flying colors, and she was eating peanut butter and crackers - no problems. Drinking Cokes, drinking malts, whatever - was fine. And that's recorded. It was no problem with my mother eating.

MR. DITTA: I have nothing further, Your Honor.

THE COURT: Thank you.

MS. SCHWAGER: I just have a follow-up question.

MR. OSTROM: Your Honor, can we finish our side and then let her redirect on all the examination because it's not -- she's not ready to recross yet -- or

redirect. We have questions. We have a pattern to abide by.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. COMSTOCK:

Q. Just a few questions.

A. Okay.

Q. Were you ever told by the staff at Hampton that she was having trouble swallowing, that your mother was having trouble swallowing?

A. They may have. I don't recall that, but they may have. I don't know.

Q. Okay. Were you --

A. I don't recall every word they said to me, but as a general -- as a general obser --

When I went to The Hampton, I knew that I was going to be watched like a junk yard dog. If I just walked wrong, I was going to have my visitation revoked. So, I went way out of the way to be pleasant, to be nice, to be cordial, to be helpful. You know, I'm your servant. What do you want me to do to make everything go rosy? They told me, don't do that - well, I stepped back because I knew that anything I said and do, I would be -- my visitation would be revoked. So, I was on pins and needles.

Q. So, you don't recall on October the 17th when they told you that she -- that the food that she received, had to be the consistency of something like mashed potatoes, mashed rice, beans, peas - that she needed something of that consistency in order to swallow safely; you don't recall that?

A. Whatever I would bring to Mother to eat --

Q. It's a "yes" or "no" question.

Do you recall being told by the staff at The Hampton that her food needed to be of that consistency in order to safely swallow?

A. They had mentioned something to that effect, yeah. I mean, I never gave Mother nothing -- Raylene and Nicole, they were there. If it was not thick enough, they would put thickener in it; if it was too thick, you know. I'd just don't bring nothing.

Q. And actually, that same day, I believe it was the same day, did you bring her a hamburger?

A. I sure did.

Q. Okay. Did you --

A. But during that time, ma'am, the thing that was on the wall said what we could do and what we couldn't do in the picture. That's what they told me at that time.

Q. Did someone suggest to you at that day that

maybe -- on that day, that maybe the hamburger was not the best idea for your mother?

A. Not to my knowledge.

I mean, if somebody told me "don't give this to Mother," I wouldn't have done it.

Q. Well, okay. So, if there are notes indicating that they told you that it's not a good idea --

A. You're twisting that around, Ms. Comstock.

What they told me was, during this whole process, that Mother had to have blended food. And then I was told -- The Hampton would feed Mother food.

In October, they had the Halloween party or a Thanksgiving party, it was; they were out there feeding Mother hot dogs. So, I mean, y'all going make -- I'm sugar-cubing everything. And The Hampton's giving Mother hot dogs at the party.

So, like I said, I tried to do and please everything they do. You're taking this out of context, and you're trying to make me being something or done something I didn't do.

Q. Ms. Johnston, I'm reading from notes that's the resident log that I picked up from The Hampton last Friday when I went out to visit. And I'm reading the nurses' notes indicating that you came out on October the 17th and that they asked you not to give her the

hamburger because they felt -- my interpretation of the notes is that they felt that it was at risk and that your response was, "Okay. Okay. She can have a little bit. There's no problem. I'll just, I'll just give her a little."

A. Is that from the caregiver herself or was that from the staff?

Q. I believe these are the staff notes.

A. Okay. Well, I'm going to -- I'm not going to say that's true because I have to go back and listen to the audio because I'm not going, I'm not going to say that something's true if I don't remember. I want to listen to the audio. So, I'm going to take the fifth on that --

Q. Okay --

MS. SCHWAGER: Your Honor, I'd really just like to object to this kind of extensive badgering of her, Sherry, on these questions.

What I anticipated was, when you don't have a defense to come up with a good offense.

And, you know, these notes, they could be self-serving when you're writing notes, and you're afraid someone is going to sue you. And she'd already been trashed before she ever even arrived. You know, this is what you're going to find. So, to me this

proves nothing.

And Sherry is not the Applicant. I would remind the Court --

THE COURT: But you're asking for her visitation to be restored, and so these are facts that I would have to hear in order to consider that, you know --

MS. SCHWAGER: I understand. But I just think it's gone a little bit, you know, far --

THE COURT: Well, I mean, this is -- I mean, this is pretty important stuff. I mean, if she's coming in and bringing food like a hamburger, and she's been told, you know, her mom can only eat --

MS. SCWWAGER: And if Cindy takes over as guardian, that would be her responsibility to ensure that Sherry complies with the directives.

THE COURT: Well, not necessarily because the institution itself can ban the visitation. And so, I mean, I think we're looking at two levels here. And, I mean, you guys are asking for restoration of her visitation. So, I mean, they have an obligation to collect this testimony if that's what your client is seeking.

THE WITNESS: Ms. Butts, may I say a comment?

THE COURT: Sure.

THE WITNESS: If they feel like what I'm giving Mother is a problem -- you know, I never went with the intention to causing no problems with nobody. And I'm not a rule-breaker. I mean, I work in a chemical plant, and I have to follow rules and get my regulation stuff, and I don't like trouble. I don't like to create -- I wish this would go away. All we want to do is take care of my mother and love her. But they're making this such an issue -- we're all getting sidetracked.

This issue is, is that Mother's not getting treated correctly. That's how I feel. And she, Momma, has the evidence to prove this with broken legs, pneumonia, she's been in that bed. And it doesn't make any difference what the caregiver says about me or anybody else. My mother is being hurt. You can look at her picture. She's not happy. She's depressed. She's lost weight. She's not eating. Her skin is deteriorating. Whether I see my mother or not, these things need to be addressed.

But I'm just asking the Court that I am not a problem with my mother, and they're painting me a picture that I'm a vicious dog after them.

I just want the Court to know that

whatever it takes for me to get back in to see my mother, but when something is wrong, I'm going to approach them. And when I do approach them, this is what happens - I get attacked.

THE COURT: I understand, Ms. Johnston. But you have to understand, too, that you made some serious allegations against them. And, so -- and I know you have your mom's best interest at heart, but I also, you know, until I hear differently - I think that they have your mom's best interest at heart, too.

And so here we are. We're trying to have a conference. We're trying to figure out does something need to happen now or is your mom in a safe place where she can be cared for until all of these issues can be sorted out? Because the application that's on file is an emergency application, and that's why we're here today.

Do we need to take immediate action or can we do this in a due course of -- well, just a due course of the guardianship? So, let's, let's try to keep the focus --

THE WITNESS: I agree.

One thing I will say, that I do believe this is life and death of my mother. And what I would suggest, until we get this squared away, that to move

Mother to a facility where they can administer her with an IV treatment and not have to send her to the hospital, get her back on the north side of town where her kids can see her.

There's a place that we had suggested today that was the Emeritus over at Kingwood. It's half a mile from where she's at. And the hospital doesn't have her medical records. And the caregivers that were over there, and the medical staff that left Silverado last year are over there. So, she wouldn't be a stranger over there, and she could get her health re-established whether I saw her or not.

I do believe, with all my heart, if Mother's there and she's not eating, Momma's not going to eat for them people. She don't like this food, number one. This is not building her moral -- or morale up. It is tearing her down. It's tearing the whole family down whether I get to see Momma or not or we even get to have guardianship over Mother. The fact is, Momma, as I feel, is in dire need of getting out of this care, of these hands, these people, into someone that would make sure that she gets the IV that she needed and the food that she needed --

THE COURT: And this could be accomplished at Emeritus?

THE WITNESS: Yes, sir -- yes, ma'am.

THE COURT: Okay. And that's on the north side of town?

THE WITNESS: Yes, ma'am. Family can see them --

THE COURT: I got it. Okay. And it's unusual for us to have a dialog; but again, this is just a conference - it's not a hearing. But I'll let Ms. Comstock proceed with her questions.

Q. (BY MS. COMSTOCK) Ms. Johnston, I just want to follow up with some more of these notes because I'm trying to understand what her current situation is over at Hampton's and your impressions as well as your family's impressions.

So, I'm reading these noes. The last note was on the 17th of October. And then on the 20th of October, there are notes indicating that your behavior bringing food and drink up to the -- to your mother is being repeated. And she, the nurse or the person making these notes at this point, says that she looks like she's being forced to eat these things and that they're the wrong consistency and that she was coughing and choking lightly when she was ingesting this food.

So, I just wanted to hear from you what your impressions were when you were giving this food to

your mother - whether she was having any difficulty swallowing or any problems with the food that you brought in.

A. No, ma'am. When I did bring juice to Mother, as --

Judge, I brought a sample of what I brought if you would like to see it, if the Court would allow that. Because, you know, everybody's making this big issue of this -- of the drink. You know, and to me that's irrelevant. Mother is, Mother is in serious trouble. This is neglect --

THE COURT: Well, I mean, but you've got to answer her question.

THE WITNESS: No. No, ma'am --

THE COURT: She asked if you had any trouble --

A. No, ma'am. When I gave Mother her juice, the caregivers that were there, if it was too thin or whatever, they had thickening to make it thicker, to make it any consistency that they wanted. They had the freedom to do that. I mean, I didn't hide nothing. I left it there in the icebox for them to do. If they didn't like it, they could pour it out.

Q. (BY MS. COMSTOCK) So, you were leaving juice in the icebox at The Hampton?

A. I was at first until Ginger told me not to.

When we first got there, The Hampton -- Ginger told us that -- I asked her could I bring the juice for Mother, and she says, "Well, we really don't want it to be in their kitchen." So, I asked the lady at The Hampton, could we leave it there in the kitchen, and she said, "No, it has to be FDA-approved" whatever. And I can understand that.

So, my next response to Ginger was, "Well, let's get an icebox." That would solve the problem. Other people have juices in their rooms and everything. So, we said -- she said, "No problem."

So, I got the juice, and I told her what was in it, wasn't no magic spell. Nothing was in it. And they didn't have a problem with it --

Q. Excuse me. You told who what was in it?

A. I called the lady that was toward the kitchen and the nurse -- I mean, everybody knew. I didn't hide nothing --

Q. How often did you bring the juice in?

A. I would, first of all, I would bring it. I had to bring it up every day because Ginger would allow it to be there. And then they allowed for the icebox. I left it there in a pint or a quart size. And then I couldn't leave it there overnight because they

weren't -- she wasn't happy with it. So, the caregiver would take it home and bring it back the next day and they would give it to her also.

Q. Who wasn't happy with it?

A. Ginger and them.

Q. Did they tell you why?

A. No. Nobody's told me nothing. I'm sitting here like a ghost flying around, and all this stuff is going on. Nobody tells me nothing.

Q. And who is the caregiver that took it home and then brought it back?

A. Nicole.

Q. Okay. So, she was bringing it back, and she was giving it --

A. She was giving it to her.

Q. And how long would that bottle of juice last?

A. It'd last four or five days until I got off shift, and I could make some more fresh for her.

Q. Okay. And you never noticed her having any problems swallowing either the juice or any of the other foods that you brought in?

A. I never noticed it.

Q. Did the fact that the doctors were raising swallowing as a concern, did that make you concerned about the types of food that you were bringing up for

your mother?

A. The only time I heard them talking about Mother's swallowing was in Ginger's email or the -- I talked to the doctor. Finally come across a doctor that was, two women doctor came in there, and they didn't even want to talk to me. They just kept saying, "We will take your information, but we can't discuss nothing with you because you're not Ginger Lott."

Q. Okay. And on October the 23rd, there's a note that says that you had come in and removed the home health provider -- the home health provider's dressing on her arm and the spot on her cosicks [sic]; do you recall that day?

A. I removed what now?

Q. You removed the dressings on her wounds that Home Health had applied. Home Health comes in twice a week to check her wounds, is my understanding, and that you came in on October the 23rd and removed those dressings.

A. The dressing that was on her behind had poo poo all over it. I mean, Momma made a mess. Now I could have set down --

Q. Do you know that this was October the 23rd that this occurred, that she --

A. Was it on a Friday? If it was on a Friday --

Q. It doesn't indicate what day.

A. I don't know. On a Friday -- the only time I took a bandage off of Mother was that Friday.

Q. Do you recall telling them that you wanted to leave the wound open to air it out, is that --

A. Yeah, for a few minutes. Yeah.

Q. Okay. Did they tell you that this might leave it open to infection?

A. No.

Q. Okay.

A. Nobody had a problem with it.

Q. Do you know what day of the week Home Health came and applied --

A. I have no idea. Nobody tells me nothing.

Q. You never saw Home Health --

A. No.

Q. -- when you were there on a visit?

A. No.

Q. Okay. Did you ever provide your own solutions for the nebulizer treatments?

A. I brought a can of nasal. I should have brought that nasal solution that you would put in a little cup - you buy them at Eckerd's - and you would clean your nose/clean your sinuses. I bought a can of that, and I brought it up there.

When we first got this started, and I sprayed some of that in there, and Nicole and everybody was there, never had a problem with it until I come in one day and the nebulizer was in the nurse's office. And they told me I couldn't do that no more. So, that was that.

Q. Did you --

A. But they were still bringing their stuff in, and I would nebulize Momma with their stuff, put it on her and nebulize, I mean --

Q. So, before you brought in your own solutions, did you have that either approved by the nursing facility or physician or anyone else?

A. I didn't think it was a problem since we left, asked Silverado, and nobody said nothing.

Q. Did you let anyone know that you were doing this?

A. I didn't hide it. I didn't go out there and tell the nurse, this is what I'm doing, because I didn't think it was a problem. I thought the protocol would probably be the same as it was at Silverado. I had no reason to believe it wasn't going to be. Maybe I should have thought that since we have a new guardian, and she went along with what David was doing in the past, I just assumed that nothing was going to change in the future.

Q. With what, who, David was doing?

A. David was doing. David didn't have a problem with it. Silverado didn't. And I didn't think it was going to be a trillion-million-dollar problem.

Q. Okay. And then on November the 8th, there's a note indicating that "the daughter," you, "were cleaning the resident's buttock's area. The daughter then lifted her finger and had BM, or feces on it, and asked to see if she wanted to smell it. The daughter then wanted the CA to do the breathing treatment later but that she," I said the CA, "remained until the daughter was finished. She reports that the dressing was no longer over the wound and the daughter continued to wipe and wipe until she had removed the ointment."

What was your goal in removing the dressing and the ointment that day?

A. She had used the bathroom and made a big mess. And Raylene was sitting -- nobody even told me what was going on. So, I didn't know that they -- that Home Health, or who it was, even had a protocol on how they was treating Mother because nobody would share nothing with me. And I found this out after the caregiver came in - they came in twice a week - that they changed her.

So, I was in the dark on anything that they did but --

Q. You took it upon yourself to take the dressings off and change dressings --

A. I have changed Mother's diaper since 2007.

Q. Well, you understand now that you're not her caregiver, and you're not her doctor, correct?

A. I wasn't trying to be her doctor; I was just trying to be a daughter that her mother was dirty, and she needed her behind to be taken care of, cleaned up.

Q. Did you make anyone aware of that, at the time?

A. Raylene was sitting right beside me. I mean, I wasn't taking Momma into a closet and scrubbing her. That's a ball-face lie. I went in there. Raylene handed me the wipes. Nobody had a problem with it. The caregiver came in. We laughed and joked within there, and she had her nose down there, and I said, "Well smell this." I mean, I wasn't trying -- we just been having fun and games, you know, casual conversation. We weren't trying to make this into a -- to this.

Q. Did you take photographs that day?

A. Yes, I did.

Q. Are those the photographs that you took?

A. Two of them are.

Q. That are attached to your pleadings?

A. Two of them are. The third one is when she's in the hospital.

Q. This recent time?

A. Yes. And I asked Ginger Lott, did she tell the caregiver, the hospital, that Mother had bed sores before she came in, and she told me she did.

And in 2012, Mother went to the hospital at Kingwood in Silverado. Momma had bed sores on her behind at Silverado. And Dr. Coo Nguyen, unless they went down there and told in the medical report and gave it to David, that the hospital had given Momma those bed sores, and that was a lie. She went to the hospital with bed sores, and now I was going to make sure that this time, Mother went to the hospital, the hospital, she wasn't going to use this same story that Mother had bed sores because of something I did or she didn't report it. That's why I told the hospital to make sure that they knew that my mother had bed sores.

Q. Have you been asked not to remove the dressings --

A. No --

Q. -- from the wounds?

A. -- not to my knowledge.

Q. Never?

A. I didn't know -- I don't know if it was never. I wasn't -- not to my knowledge. I mean --

Q. When your mother was at Silverado, did the

staff there ever voice --

A. No.

Q. -- concerns about you removing her dressings and taking photographs over there?

A. No.

Ms. Comstock --

MS. COMSTOCK: I pass the witness.

CROSS EXAMINATION

BY MR. OSTROM:

Q. I want to start by creating a timeframe. And I think you had responded to us that November 13th was the last day that you saw your mother; is that right?

A. The day before she left to go home to The Hampton, I think it was on a Sunday. Whatever date that was, was the last day I seen Mother.

Q. So, somewhere in the timeframe of November 13th, 2013, is the last time you saw your mother; is that right?

A. That's correct.

Q. So, all of the stuff you've been telling the judge about, about the broken leg, the bed sores, the scratches, all of that has occurred, and you witnessed prior to November 13th; is that right?

A. That's correct.

Q. Okay. So, as we sit here today, you don't know

what your mother's current immediate needs are, do you?

A. Cindy would have to answer that. I know what her needs were at the time of November 13, and I was gravely concerned that my mother needed to be helped. From May the 16th, when Momma left Silverado, she was in grave shape. Her health has been taking a nose dive. And every time the family tries to intervene to give Mother some help, we've hit a brick wall.

Q. Let's talk about that.

So, you indicate that from May 16th of 2013, when your mom was at Silverado, after that date, your mother's health has declined; is that right?

A. Yes.

Q. The only -- after that date is the day that your mother broke her ankle; is that right?

A. She broke her ankle, I believe it was, on the 16th or 17th of June.

Q. Okay. So, after May she had broken her ankle; is that right?

A. Pardon?

Q. After May 16, she --

A. That's correct; yes, sir.

Q. Were you advised that the ankle was broken?

A. Sheryl, the nurse, had called me on my cell phone when I was in Georgia at the time, in Atlanta,

Georgia. She had called and told me that it had happened.

Q. And I believe you testified that a doctor had advised that there was no need to set the ankle; is that right?

A. Well, she went -- when she went to the doctor and the doctor's report, his report says that an 85 year-old woman broke her leg and that at her age, that they would leave it, the way it looked, it was okay.

Q. Okay. Now, so the ankle currently isn't an emergent threat to Ms. Mills; is that right?

A. I say it is. It's not set. It's crooked. And we don't know. Ms. Lott says it's healed, but the pictures apparently tell me that -- I disagree with Ms. Lott on her -- I have no way of finding out, and I haven't seen an X-ray or talked to a doctor to -- she had led me down the path that anything she says - I don't believe it.

Q. Okay. So, regardless of whether you believe Ms. Lott or not, you don't know, currently as you sit here today, whether the ankle is an emergent issue that has to be immediately addressed by this Court or not.

A. I say the emergency that my mother has, number one, is since she's been in Ms. Lott's care, my mother has been sick, she's been to the hospital, she's

dehydrated, she's been put into a facility that's 35 miles up the road. We can't check on her to see how her health is. She fell out of the wheel chair or they dropped her, whatever; she's got skin tears; she's got a bog knot on her head; she's got black eyes. And any time I go into a nursing home, I don't care -- and I saw black eyes, I would be alarmed.

Q. Okay.

A. I wouldn't -- I would not just set this on the table and say, well maybe something might be going on. Something is going on.

Q. Okay. Well let's go through each of those issues so the Court has a -- I'm sure the Court's aware. Let's create a timeframe.

When was Ms. Lott appointed?

A. September the 17th, I believe.

Q. Okay. On or about -- what we're talking about now, after September 17, 2013, I think you indicated that you last saw your mom -- or mother, on November 13. So, we're going to cover a month of time between September 17, 2013 and November 13, 2013; you understand that?

A. Yes, sir.

Q. Okay. You indicated that she was suffering from an infection. What infection was she suffering

from?

A. When she left to go to The Hampton. I don't know; I didn't see her until the 8th. She got there on the 8th.

The Hampton had had her lungs X-ray'd 'cause she was rattling. And they came back. I was told they were clear, and that's all I was told.

Q. Okay. Okay. So, there was some concern that there was an infection or there was something going on with Ms. Mills' lungs. And as I understand your testimony, The Hampton followed the protocol, had the X-ray done, and they can't show anything in Ms. Mills' lungs; is that right?

A. I don't know what their protocol is. I couldn't tell you that.

Q. Okay. But you've been told that there is a X-ray out there that indicates there is -- that they're not seeing any fluid or infection in the lungs?

A. The only thing I was told is that Mother had an X-ray, and her lungs were clear. Now, I don't know what that means, if they had one or I don't know.

Q. Okay. So, let's -- I think one of the other things you had talked about that you believed causes an immediate concern is your mother's proper nutrition; is that right?

A. I believe it has a contributing factor, yes.

Q. And I'm not going to belabor the issues that were addressed in these nurses' notes. But from that period of time, September 17th to November 13th, was your mother being fed at The Hampton's?

A. They offered her food.

Q. Okay. Did you ever observe her eating the food they were offering her?

A. She would eat bits and pieces of it.

Q. Okay. You also indicated the nurse, a nurse, was juicing your mother; is that right?

A. No, not a nurse; it was a caregiver.

Q. Okay. So, there was a caregiver there that was providing juice to your mother?

A. She would pour it in the glass - the stuff I would bring - put it in the glass, put that thing there. Whatever consistency they told her it was, nectar-like, and she drank it.

Q. Now I believe you testified that this juice was miraculous for your mom's skin; is that right?

A. I just said it was beneficial. It was good for anybody. Anybody that was sick or wanted to stay well. It's like taking fruits and vegetables and putting it on your plate and chopping it all up. Instead of eating a whole big green bean, you chopped it up, add a little

water, and you drank it.

Q. Do you know if the juice you were giving her created any side effects?

A. No. No. No side effects.

Q. Okay. But, during the same period of time, your mother was still experiencing skin tears; is that right?

A. That's correct.

Q. And at some point in time, she experienced the bed sores; is that right?

A. Sometime along the way, yes.

Q. Okay. Let's talk -- so, the overall benefit of this juice, is it reflected anywhere in the medical records you've seen regarding your mom?

A. The only thing I saw in the medical records referring my juice has been trashed.

Q. Okay. So, what have you seen in the medical records?

A. I've seen it in Silverado's medical records. Instead of saying Momma's doing good, her skin is doing well, she's been alert - I've seen that "Oh, her daughter is giving her juice. It might interfere with her eating her foods that we might need to give her some nutritional, extra nutrition." It's all I've heard.

MR. HESTER: Your Honor, excuse me.

I'm going to object to the questioning by the attorney for Mr. Mills on the grounds that he is totally disqualified for any of this. He doesn't have any standing at all in this proceeding based on his background and what he's done and -- excuse me, it's spelled out in the filings that we have made, as to what he's done. And he has absolutely no standing in this matter whatsoever.

So, for the record, based on that, I object to any testimony from him through his attorney or any other way.

THE COURT: Well, that would require a formal motion to disqualify --

MR. HESTER: Yes, ma'am. For the record, I just want it on the record to know that I --

THE COURT: I mean, he's the son; your client's the daughter; and I'm sure he has his mother's best interest at heart. There may be things that disqualify him - I don't know; but that's not what we're here about. And it's just a conference. And so I'm --

MR. HESTER: It's okay.

THE COURT: Just like I allowed you guys a lot of latitude, I'm going to allow them a lot of latitude, so --

MR. HESTER: That's quite all right. Just

wanted to go on the record to let you know what we're saying. That's all.

MS. SCHWAGER: Our motion is on file. It was filed today.

THE COURT: Okay.

MR. OSTROM: Your Honor, may I proceed?

THE COURT: Certainly.

Q. (BY MR. OSTROM) Ms. Mills -- or Ms. Johnston, additionally, I think you talked about the breathing treatments. Your mother was getting breathing treatments at The Hampton's; is that right?

A. When she first came there to The Hampton, to my knowledge, no, sir.

Q. Okay. Do you know between that period of time that you saw your mom, September 17 and November 13, was she receiving any breathing treatments?

A. I don't know; I wasn't there.

Q. So, the period of time, I think it's reflected in these nurses' notes that you were, in fact, present at The Hampton between September 17th, 2013 and November 8th. The last nurse's notes I'm looking at 2013 --

A. You told me prior to 2000 -- September 17, did I notice. Before the 17th, I was not allowed to be near Mother. And after the 18th, I guess, when they moved Mother, or the 24th whenever they moved Mother, was my

first day to get to see Mother.

Q. Okay. And so after that period of time, up 'til November 13th, was your mother receiving breathing treatments at The Hampton?

A. Mother didn't, to my knowledge, receive any breathing treatment other than what I gave her, that saline solution, until Ginger Lott brought it up that I couldn't give her a breathing treatment. And I wrote her a letter saying that my mother had COPD, and she hasn't been seen by a pulominarious [sic] doctor since the whole time Momma's been sick.

And the Courts and the doctors have made this such a big, huge issue that my mother has COPD. Silverado has big ol' huge letters, COPD, she's net -- ever to see a specialist on her medical conditions.

Dr. Coo Nguyen was a sleep disorder doctor, and she's on the board of directors of a hospice program with Silverado. And she is the one that's dictating what kind of medical treatment my mother has and what she doesn't have. And we have told David. And I've even addressed this with Ginger that I don't like a doctor that's over the nursing home that make life-and-death decisions to her guardian whether my mother lives and dies and he goes along with it without a second opinion. I have big -- that's a big problem.

Q. Okay. But let's -- I want to bring us back to because that's, again, that was under David's watch and that's Silverado and --

A. Since September. Since September to November, the only time I knew that Mother got breathing treatments per Ginger Lott was after I was told not to, and we wrote her that letter. So, prior to that letter, September the 17th - I don't know; I never saw them.

Q. Okay. You had indicated that you gave -- but you did give your mother some breathing treatments at The Hampton; is that right?

A. Yes, sir, I did.

Q. And I think you had indicated that there was some product you were buying over the counter and putting it into the breathing treatments; is that right?

A. It's a nasal... It's a can with nasal wash -- saline. You can wash your eyes with it. If you've got a sinus infection, it tells you directions to squirt it up, clean your sinus cavity. It's all it is. It's a nasal cleanse. Saline water.

Q. Were you ever -- did you ever put Epsom Salt in the breathing treatment?

A. I put Epsom Salt in Momma's foot bath. When I would wash her feet, I took, put it in her foot bath, and scrubbed her feet with it because she had dirt and

crap on her feet. And I used it to clean her feet and just give her a foot soak and wash her hands because her hands get so tied up, knotted up. I would wash her hands with it and go ahead and clean her fingers, clean all the stuff out of her fingers and cut her fingernails.

Q. Okay. Did you ever put it in her breathing treatment?

A. I don't think I ever did. No, I always used that saline.

Q. Okay. And the saline that the hospital provides or that The Hamptons provide, is no different than the saline that you're buying over the counter, right?

A. I don't know what The Hampton provides.

Silverado provides a saline solution. It's .00 or .05005. I don't know what the percentage is. But I went to Eckerd Drugs or -- Eckerd's or Walgreens. I bought this specifically over the counter because I knew this would happen and because I could say I didn't tamper with nothing, and I put it in there. I didn't hide it from nobody. And when the nurses came in, they saw that, and they told me to stop - I stopped.

Q. Okay. So, the judge understands. Your concern is your mother needs to be receiving breathing

treatments, right?

A. Yes.

Q. Doesn't matter whether you give it to her --

A. That's right.

Q. And if The Hampton has a protocol for giving breathing treatments with whatever stuff they use, you want your mother receiving those breathing treatments?

A. I would like to see my mother receive breathing treatments and a location on the north side of town where her children could make sure that she's getting the proper medical attention and not being abused. And when she does get sick, that they have another level of nursing care that The Hampton and Silverado does not have. If it's not Emeritus, there's another place, I think, called the Westminster that's in Kingwood that has specialized care that can treat Mother to get her back on her feet, and I don't even have to touch her. They have the facility to do that and not let her get beaten down to a pulp and have to go to the hospital with pneumonia when this could be stopped.

Q. Okay. But as we sit here today, The Hampton is currently caring for your mother, right?

A. That's correct.

Q. And as we sit here today, if something were to happen to your mother, they don't have the ability to

give her emergent care, and she'd have to go to the hospital; is that right?

A. That's correct as far as I know.

Q. So, the decision to move your mother in her current state, as long as we hear later that The Hamptons are, in fact, giving lung care, again - that doesn't constitute an emergency, does it?

A. Sir, my mother needs help. And you can label it however you want to, but I'm telling you my mother is sick. And at the rate this is going on, this has been a battle of the pride of the guardian and my brother. My mother needs to be put into a facility that can take care of her if -- the Hampton doesn't need to be involved in this because if Mother got sick, they'd have to wait 'til she got to a point that they would call somebody.

If my mother had an IV where they could hydrate her or give her nutrition or give her breathing treatments in a facility that she could stay at and it's got all the three levels, if Mother is sick, she can go to the -- don't have to leave the place, she can get her care taken care of there; she can go back down to her room and go back to her normal living and it's more than that. It's been a part of intervention there that would keep her out of the hospital, keep my mother's cost down

of her estate or whatever, and keep the doctors at a minimum and keep our momma happy and keep her built up. I mean, what's wrong with that? I think to me, that's a win-win on Mother's case.

Q. Well, let's talk about the entity that you're asking the Court to move your mom to.

In your pleading, you indicate that -- what's the name of the institute you were --

A. It's called the Emeritus.

Q. Emeritus?

A. Yes, sir.

Q. Okay. Did you circulate a PBS special or ask the guardians to see a PBS special relating to the Emeritus?

A. Yes, I did.

Q. So, this is something that you had in your mind of where you'd like Mother to go for quite some time, then, right?

A. That's correct.

Q. Did you -- that PBS special on Emeritus, do you recall it being critical of Emeritus?

A. I think it brought out the fact that all nursing home care known at Emeritus shares its problems of not having -- elderly people do get hurt in places like that. And people -- I think that's what that movie

brought out. It didn't change the fact that I still think that's the facility that she would go -- went to. Its wrote on a local basis. And I know the lady -- I met the lady that ran the Emeritus a couple of years ago when we were looking for Momma a place to live, she worked in Paris, which is a Brookdale Community, the same as The Hampton.

And when Ginger moved Mother from Kingwood to The Hampton, I had put up a 500-dollar deposit at The Terrace. If we have got custody of Mother, we could go there with her which is the same identical layout, so there was no reason for, number one, to move Mother 40 miles up the road/two hours later when she can move right across the railroad tracks, five minutes up the road.

But the Emeritus is, in my opinion, it's brand new. It's got staff. I knew a lot of the staff there. I felt comfortable. And we had created a good relationship out there that we could all work with, would have been neutral about it. And if it wasn't Emeritus, it could be another place. It could have been Jack and Jill's Rehab -- I don't care who it was as long as they had that other level of care for Mother. That was my whole point with David - that Silverardo didn't have the quality care that Mother had to have or we

would need from time to time. They just totally refused to even listen.

Q. Okay. Were you ever told that David or anybody on behalf of your mom was having pla -- difficulty finding places that would take your mother?

A. Ms. Comstock wrote a report, and I went over to Emeritus -- Emeritus, and she said that I don't know who did your report, but I went to Ana Marie over and asked who went. Was Megan Christopher, and I figured it was Ginger. I don't know who the other two people were, but they went as a gratitude to her over at Emeritus. They went on the first floor, and then they wrote in your report that they was under-staffed, which wasn't true and another fact that y'all were refused being able to go up there and see the third level of the care-giving that they give. That's what she wrote in her report. What she told me is not accurate.

Q. Okay. Do you understand that the inner place within the Emeritus nursing home or the care facility and it's a rehabilitative room?

A. I took a tour to it.

Q. Do you understand that the patients don't automatically get moved within the facility?

A. I know -- I had asked Ana Marie at the time there was an opening and there's an opening today. If

the Court was to move Mother to Emeritus, she could -- be -- I told them I would pay the first three-months' rent to get the paperwork squared away so Mother could be moved to a place close to her family and a place where she could give more care.

Q. Now, let's talk about being close to the family.

You currently aren't seeing Mom; is that right?

A. Not at this present time, no, sir.

Q. The only family that are currently seeing Mom is your sister, Sherry?

A. Cindy.

Q. Cindy and your brother, Larry; is that right?

A. That's correct. My sister lives a hundred miles up the road from here. So, the amount of care that she can come in and check on Momma at a time, it's a lot limited.

Larry lives four or five miles or six miles down the road, and he lives five, six miles down the road from Kingwood. So, wherever Momma went, it doesn't make any difference to Larry because it's the same amount of mileage. And but for me to come see Mother, I'm another 35 miles up the road. And why would you want to move a loved one that's so attached to

their family or her kids, why would you want to move the mother 40 miles up the road knowing that it's going to be a big inconvenience to her when there's places there that have the facility to take care of her; why would you pass all these up - 10 or 15 of them - to bring her 35 miles up the road and make it so inconvenient so we can check on her?

Q. And let's -- I want to get to that.

How frequently were you visiting your mom at The Hamptons between September 17 and November 13?

A. I would try -- I had to go buy a car 'cause I couldn't afford the fuel on my truck. I'll be down on my days off. I go on my first day off, and I would try to get two more days. I would try to get three of my four days off. If I go on nights, I have to get some sleep.

Q. So, you would go about three times a week?

A. Three times a week. Because of the distance, I had to go -- Ginger made it an impossibility. It would take me another hour and a half to get over here through traffic. And after work, I would come and see Momma when she lived at Silverado and eat dinner with her. It cut all that out. I get over here about 7:00 at night, after seeing her about 10 minutes then I go home.

Q. Okay. And how frequently was Cindy visiting

your mother during that same period of time?

A. She saw her about once a week.

Q. And do you know how frequently Larry was up there?

A. I have no ideal. I bumped into him one time. I know at Silverado I've seen him one or two times. I have no ideal. But I know when I was there, and I was there regular, I never saw him.

Q. Okay.

Were you aware that Terrace couldn't take your mother because she needed all her ABLS?

A. That's not true. When I went to The Terrace, I took Mr. Hester with me. And I'm paying the worse scenario you could think of. I told Megan that "I want you to give me a price. If my mother could not eat, could not swallow, bed ridden, furnish all the documents, everything, what it would cost me to take care of Mother." And she gave me a price. I think it was $5500 a month. And I gave her a check for $500. She took it. I'm paying the worse scenario, and she did not one time tell me that she could not take care of my mother.

Q. You have heard, though, that they have made that representation; is that right?

A. I don't care what they made. I have it

recorded.

Q. Ultimately, as the judge astutely pointed out, the facility gets to decide who they take; is that right?

A. That's correct.

Q. And we can't force that choice on the facility; you understand that, right?

A. Well, I was under the impression if a Court comes in there and says you will take this woman or this man, the facility has to. I may be wrong. I don't know. There may be a law. I'm not a lawyer, and I don't know.

THE COURT: I don't have that kind of power.

THE WITNESS: Like I said, I don't know.

MR. OSTROM: Your Honor, I have no further questions.

THE COURT: Thank you.

MS. SCHWAGER: Yes, Your Honor, I'd just like to bring up a few questions and keep it brief.

REDIRECT EXAMINATION

BY MS. SCHWAGER:

Q. There's been a lot of focus on Ginger just stepping in the 17th of September until the present when, in fact, you had just testified that she served

and stayed as representative during most of the last, what, two or three years?

A. Uh-huh.

Q. Did she sign off on medical visits?

A. Yes, she did. She took my mother to the foot doctor, the specialist, Mr. Criswell. She signed documents on behalf of David. She took Mother to Dr. Stanley Fisher which is at the Methodist Hospital, which is also on Silverado's payroll. He's the medical doctor for Silverado Senior Living. She took my mother there and signed off on some paperwork there. I don't know. I wasn't there. But I was there when she went -- took Mother to the foot doctor. And she signed in/she signed off. She signed all the documents. David's never been, to my knowledge, to a doctor's visit or anything with Mother. The only time I seen David was when we had our family meeting.

Q. So, David used Ginger for all --

A. Everything, as far as I know.

Q. Okay. And the other question I had for you was --

A. Candice, may I also ask -- add that when he had our family conference with Mr. Hester and Ms. Comstock and Megan Christopher and David Dexel, Ginger Lott also participated in that phone conversation which she

wasn't -- she was acting, I guess, as a associate of Mr. Dexel. And I just think this is -- when someone gives caregive to a guardian, the next thing you know, she's the guardian of the person she was furnishing care with - that's a conflict of interest.

Q. Okay. But the primary point is she's been aware --

A. Yes, she's been totally aware --

Q. -- of all your mother's issues --

A. There's nothing that hasn't been hid with my mother that Ginger Lott does not know.

Q. And at one point in time, did Ginger order the gel overlay or how did she end up --

A. In 2009 -- 2008, when my mother was at Park Manor, Momma had bed sores. And David moved Mother from Park Manor to Silverado because she had bed sores, and I would doctor Mother's bed sores at silver -- at Park Manor.

When she moved to Silverado, she had this broken-down old bed that she still has and Ginger bought the same broken bed.

Momma needs a feather bed with an air mattress on it and moving her back and forth; and she bought this hospital bed - looks like a prisoner would sleep on - no gel, no nothing, to my knowledge. Momma

slept on a gel-filled finally in 2010, I think it was, that David Dexel got her. And Ginger Lott, I believe, was the one who ordered it. She was aware of this, and we had Momma a gel mattress. And when they moved her in May from Silverado to -- from Hickory to Pecan, the mattress got lost. Imagine that.

The thing about it is, nobody's made an effort to replace that mattress that she had to help her not get bed sores.

Q. Right. So, even though Ginger's been serving since September, and she knows about the bed sores, there's been no effort to get an air mattress or gel overlay or something that would stop --

A. To my knowledge.

Now I addressed that the night we went to the emergency room, and I told her they had been promised us a new bed for Mother.

When we went into the hospital, there was this nice bed, a hospital bed, that moved Momma back and forth; it was clean; it was nice; and we were expecting something of that nature that would help Mother not get bed sores, and what do we get? We get the same bed she's got.

Q. So, have you seen any improvement or any changes that Ginger's made in her care?

A. No, she's continued on the same personal care David did in the past. She's just a continuation of David.

Q. All right. Thank you, Sherry.

A. You're welcome.

MR. DITTA: Your Honor, I have nothing further.

MS. COMSTOCK: Nothing further.

MR. OSTROM: Nothing further, Your Honor.

THE COURT: Thank you, Ms. Johnston, for your testimony. You're excused at this time.

MS. SCHWAGER: Your Honor, I will call Cindy Pierce.

THE COURT: Okay. Now, we only have about an hour and five minutes left.

MS. SCHWAGER: I only wanted to cover the time period that she's saying -- that Sherry was not present.

THE COURT: That's fine. I just want to make everyone aware we're running out of time, and so we need to speed things up.

CINDY SUE PIERCE

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SCHWAGER:

Q. I want to limit it to November or just this fall.

As I asked Sherry, what are the -- what are some things that you noticed about your mother's care, decline, this fall, specifically, since September when Ginger was appointed?

THE COURT: And just to clear up the record, we need to know her name.

MS. SCHWAGER: I'm sorry.

Q. (BY MS. SCHWAGER) Could you state your name.

A. I'm Cindy Sue Pierce.

THE COURT: Okay. Thank you. I know but our record doesn't know that.

Q. (BY MS. SCHWAGER) Just to reiterate the question.

What are the things that you observed with your mother that concerned you or alarmed you?

A. Well, as I have always stated and everything, me going to see Mother and everything that she has deteriorated tremendously over the time period that Ginger has had her and everything too. And she's

constantly got rips all over her body. And I have not caused no conflict or anything because I don't want to be taken out of Momma's visitation or anything because she is so depressed that she cannot see her grandchildren, she cannot see her nieces and nephews or anything because as I said, they cannot afford to travel. And she's severely depressed over this. So, she will not eat or anything.

And I have to confess too that Nicole, the caretaker that she has, the nurse sitter, is a wonderful person. She would stay. She constantly checks Momma's diaper, makes sure she's dry. But she has to fight constantly with them, somebody come help to change her diaper or come help move her from the bed or whatever. She's always upset.

She posted on her bed - they didn't do it; The Hampton did not, she did - "Please rotate Mrs. Willie Jo Mills." She has to be rotated, elevated and everything else. And I have mentioned it to them too. She lays down. She has a swallow pump 'cause she has some astring [sic] that she fills up this mucus - is what she does. And that's what Momma gets checked on. It's not due to the food she's eating, it's, you know, when you get a cold, you get mucus. If you lay down, it gets worse and everything.

And Nicole is the one who ordered the X-ray - not Hampton. Not Ginger. She ordered it 'cause she said Ms. Willie Jo needs to be checked out. I was there. And I come back, she had nothing. But, I told Nicole, I said, "Well, don't lay her down. Make sure they don't do it." So, she tells them. Well, she leaves and she tells the male nurse, which is a very sweet gentleman up there, that we need to take Ms. Willie Jo to the hospital. She has something bad wrong with her - that she keeps choking and everything. And they take her. Then she has pneumonia. Then I find out this through a text late that evening or whatever, that well, "Ms. Mills has been sent to the hospital" and everything; gave the wrong room number and everything.

I had seen Ms. Nicole walking down the halls when I found out where Mother was at.

And -- but it's continuously. Skin tears, not eating. The food is horrible that they give her. And I asked one of the caretakers, and I said, "Well, would you eat this?" And she said, "Hell no." That's what she said. "I wouldn't eat that slop."

And they expect my mother to sit there, which they know Momma is a finicky eater. But they have. They feed her salads. They cut it in smaller pieces. They do give her, instead of blending it, food

cut up in small pieces. And Nicole brings her in sometimes stuff to eat and everything. It's not blended. But their remark is that they wouldn't touch that food neither.

And Momma's just falling apart. What I've seen almost brings tears to your eyes to see... Excuse me. To see my mother deteriorating like this.

I don't care about the money. Let them keep the damn money. Mother needs to be happy. I promised my father that she would be happy. This is not fair or anything. If my brother wants the damn money, let him have the money. Give me my Mother back so my mother can live a decent life and be happy for the rest of her life instead of being miserable up there and everything. This is not fair to her. I don't care. I'll supply it. I'll put her in the nursing home. I'll pay for it out of my own back pocket. Moving Mother, like I said, is just not fair. He don't care. He puts on a front that he cares but he don't care. He's never -- he wished Mother died and Daddy be still alive and everything. I apologize ...

THE COURT: We have Kleenex up there, I think.

A. But that's all I want - is my mother back, be able to take care of my mother or make her last. If she

dies tomorrow - she dies tomorrow. All I want her to do is just be happy, just seeing her. She is so depressed because she cannot see the grand kids. She lives [sic] the grand kids and everything. But they can't go. They can't afford it and everything. I go 175 miles round-trip to go see my mother. She knows I come once or twice a week 'cause that's all I can do and everything. You know, it's just not fair. It's just not fair. Like I said, if he wants the money - let him have the money. I don't care. 'Cause his comment was, in one of his reports, that he wants Mother to pay his legal fees or me pay his legal fees. And whenever this all come down to the reason all this happened was to make Mother happy. She asked not to press charges against her son when all this first started --

MR. OSTROM: Your Honor, we don't have questions on the table anymore. She's just --

THE WITNESS: Okay. Fine.

MR. OSTROM: -- limit us to an hour.

Q. (BY MS. SCHWAGER) Well, December 4th, you visited, and that was really -- that was a bit of stress filing these emergency motions and staying up to X-ray.

Can you describe what you saw December 4th that upset you. And you provided pictures like -- some of those pictures are included in the exhibits and given

to the Court.

A. I went into her room, 'cause I come up to always try to be jolly and everything. I don't mention - I don't care what he might say - I never mention what is going on up here. Momma mentions it, and I said, "Momma, don't worry about it. Everything's fine." I don't like upsetting her because I know she's worried about things.

I walked in, and she looked like hell warmed over, putting it mildly and everything. Excuse me for my words I'm using and everything, but that's the only way I can describe it. She looked like a zombie. Her eyes, withdrawn. She had skin tears all over, bruises and everything; and Nicole says "Well, they transport -- they don't know how to do her properly into the shower chairs. The people don't or anything. The staff don't know what they're doing. She's not properly being put into things to take a shower. I don't think she's had a shower or anything. I think she's strictly right now on bed baths and everything. Momma looks horrible. They cut her hair. I can understand that 'cause they can't take care of her hair, whatever. But it's just alarming. You have to look at the pictures to grasp what I'm trying to say.

I'm worried 'cause I keep telling my

momma's going to die. She's going to die in between this process. And I know the court system has particular systems to do everything, but Momma's going to be dead, and she's going to die an unhappy life which is not fair for my mother to be unhappy and everything.

And Mother, like I said, we used to take her shopping, but we can't no more or anything 'cause of the situation. So, let them make up something - Momma's health isn't what it is that she can't do it or anything 'cause I even personally went and bought her a handicap van out of my own pocket. Never asked for no money back; never asked for my money from the clothes or anything I had bought or anything. So, she could go to Kohl's and pick out her own clothes. And that's what she wants to do. And that's what I want to give my mother the last few minutes, years, whatever she's got of her life - is all we want to do.

Q. And did you observe your mother not eating or taking any --

A. Yes, I did. She was not eating. Even Nicole made the comment that she's not eating much or anything. She won't eat.

Q. What about protein?

A. Huh?

Q. Were they restricting her fluids or --

A. Well, I have never seen them, other than Nicole, she will try to give her; but Raylene does not give no liquids. Raylene is more concentrated on watching the football games or basketball games, whatever is on TV. She never has water in her room Raylene's given her.

Q. Have you found your mom dirty or --

A. No. Whenever I'm up there changing -- like I said, 'cause Nicole would go ask them 'cause she's got her hands tied on what she can do. She's really hired as a sitter. She's not hired there to go change Momma's diaper. She's not hired to go bathe Mother. She's there to be with Mother and oversee Mother.

Q. And you saw the bed that Ms. Lott ordered for her when you went to --

A. It's the same bed that she had. And me and Ms. Ginger had the conversation, and I told her this was not acceptable - that I was not going on the books. It was not -- that we wanted the hospital bed, and I talked with Mike, the boss, the medical supplies gentleman. And he said he understood what I wanted, that he did not know how to. And I said, "They're online and everything," that we could get it. And Sherry even made the comment that we will find the bed and then put it to Momma's trust to have them repay us back because Momma

needs a bed to sleep in that she can be comfortable in.

'Cause like I said, this bed that they got, you wouldn't sleep in. You wouldn't put your grand child or your children in this bed to sleep. She did, after I threw the fit, and they did not bring the gel, Momma does now have the gel pad on there. But that's not doing no good on the sleeping comforter or nothing. The only reason that gel pad's there is 'cause we threw such a fit on it.

Q. And have you seen any changes instituted by Ginger?

A. What now?

Q. Have you seen any changes instituted by Ginger Lott to address some of the urgent issues that your mom's dealing with?

A. No. No.

She stated that none of the medical records or anything were doing Mother anything, will be shared with the family members.

Q. What is your perception of her reviewing and providing information?

A. I don't think it's acceptable. I think she ought to confide in the family, and there should be meetings between all three of us to decide on what Mother's health -- what Mother needs to be done. I'm

not saying me, not Sherry, not Larry. All three of us should have a meeting on discussing Mother's health and matters and what needs to be done.

Q. And your sister, the care that she was supplementing - the juice and then start talking about the nebulizer, was your understanding -- or did you approve of that? Did you see improvements in your mom?

A. Yes, I did; and I even brung it up to David's attention that with Mother being -- the breathing treatments and everything, she was doing a lot better. She was not having the mucus build up in her chest as much or anything. She wasn't coughing as much. And we did quit giving her electronic cigarettes 'cause they were okaying the electronic cigarettes, and we quit doing it. And they said not to do it no more.

Q. Since Sherry's been banned and not able to provide the juice and the nebulizer, did you see your mom doing worse or --

A. Yes, I have. And it's just not comfort. She is. You can see from pictures from the daytime. And she's not happy. She's locked in a room, basically might as well say. They take her out to eat lunch and breakfast. She goes back to her room. She's sitting in the chair having to watch TV that she doesn't like watching what her caretaker's showing her. I'm not

saying Nicole. Nicole does anything Momma wants. But that Raylene does not. Raylene watches the games and stuff. And she's isolated in that room because the people that Momma is associated with is and they cannot help it. That's their custom. That's what's wrong with them - they don't socialize. They wander. They sit down and watch TV. This is -- there is no emotion there. It's totally a non-emotional place. When you got to go through two blocked doors, and she knows it, and her bedroom door is shut constantly and keeping her from people and everything --

Q. Do you feel like -- she had mentioned to you, Sherry?

A. She misses Sherry. She misses Betty Jo. She misses seeing Robert, her nephew on my daddy's side - all of them. She asked about Vicky, but Vicky don't go up there because, let's face it, Momma does give them money to go up there, they don't go see her and her sister, other sister, goes with my brother up there. And she doesn't want to be involved or anything with it. But she misses them. She wants to see them.

And on my daddy's side, he has family on that side of town that would come and see her on her birthday, Christmas and everything. But now we're not even notified that they even had a Thanksgiving party to

talk with Nicole and, "Well how come you can't come to Thanksgiving?" I was not notified that they was because of different times and everything.

Q. Was it last weekend?

A. It was last Friday.

Q. And you took some pictures of your mom. And what did you observe?

A. Raylene said that -- 'cause I asked her, I said, "Well how come Momma's eyes are black?" Because she's scratching her eyes. Then I told her Momma has a big knot on her forehead and bruising and makes her eyes black. And I said, "Well, what happened here?" And she said, "Well the staff didn't know what they were doing. She was with under-skilled staff, people transferring Ms. Willie Jo is what caused her from her bed to the chair. They dropped Ms. Willie Jo on the wheelchair, hitting her head on the wheelchair."

And Momma has on her right arm, severe ripped under them. They're not -- they're not even indicate or anything from here to here (Indicating) ripped because there is bloody marks under here. If you look at her back, they pick her and look like, there is blood oozing going through the cuts but that are not indicated, which I think that's just wrong if they don't call it when they put her -- when they put them on

there so they know how long the bandages have been on there, but I think is quite wrong. I think that is.

MS. SCHWAGER: I pass. Thank you, Judge.

CROSS EXAMINATION

BY MR. DITTA:

Q. Ms. Pierce, you mentioned the caregiver, Nicole. Is that someone who was hired by Ms. Lott?

A. From David Dexel and Ms. Lott, yes, sir.

Q. You're satisfied with the care she's providing; is that right?

A. Nicole - I am; Raylene - I am not. Nicole is very -- Nicole is a very compassionate woman 'cause she had lost her mother at Silverado. They found her dead six hours later, dead in her bed.

Q. Ms. Pierce, I believe you said you wanted your mother moved from The Hampton, and that she'll be happy if she's moved?

A. I know she'll be happier. I know for a fact. I don't think - I know she'll be.

Q. Where would you move her?

A. Any facility other than Silverado 'cause Silverado is severely under-staffed. They did not take proper care of Mother. And we, like we said, we had approached that to David Dexel and Ginger knows about it

and everything - that they do not take care of her. We told them numerous times the recliner couldn't sit her straight up 'cause she was sliding out. And David Dexel's comment, he didn't buy the wheelchair - Sherry bought the wheelchair. His comment was, "Do you think she really needs it?"

Q. Well, you know, she's not at Silverado anymore.

A. I didn't say, no, that she's not at Silverado.

Q. Well, you said how would her --

A. Anywhere but Silverado. There are several places that we have found back when David told us to go and look. We did go back and look, and they are just wonderful places. People, they communicate and everything with her.

Q. Okay. So, I guess I misunderstood your answer. You want her moved from The Hampton but anywhere else but Silverado; is that right?

A. Yes, sir. And I want somebody else over Mother other than Ginger because the situation we've been having.

Q. Ms. Pierce, you mentioned that, I believe, that the source of your mother's severe depression is that she can't see her grand kids; was that your testimony?

A. Her family and her grand kids, yes.

Q. Has Ms. Lott limited the visitation of the

grand kids?

A. I had told you, sir, that they visited her very regularly when she was over there 'cause they could. They are poor. They don't have the financing that any of us has.

Q. Ms. Pierce, the question was, has Ms. Lott restricted their visitation?

A. Not that I know. No, sir.

Q. And you -- other than Sherry and you --

A. Other than Sherry.

Q. And you mentioned a nephew that doesn't come to see her down because all he ever wanted was her money; was that your testimony?

A. No, sir. It's not what I said.

Q. That's what -- what did you say?

A. I said that her sister Vicky did not come see her because when my sister would -- cause Mother wanted to see Vicky. That's her sister. She and Vicky would go up to see Gene but Gene is her brother and Vicky always said, "Well I don't want money." She'd sure would pay for their gas to come down there and everything to go see them, but then it got to where 'cause Mother's used to and everything, along time ago before she got sick, if Vicky had any problems, Mother would give Vicky some money to try to help them out to

fix the house or whatever. Now that Mother's not capable of anything, then any funds, they don't care if they see her basically or not 'cause there is no money to be given.

Q. So, again, Ms. Lott has not limited your mother's sister from seeing her, has she?

A. No, I never said that she did.

Q. So, what is the emergency that her nephew or her sister who is wanting money can't -- doesn't visit her and the grand kids, can't afford to visit her?

A. I never did say that her nephews and her nieces wanted any money, I never said that. I said her sister and her brother. I never said her nieces or nephew. I said they were poor. They had to go an extra 50-something miles to go see them because they live in Tarkinton [sic], around that area where they live. They went to see her regularly whenever she was over there at Silverado. And then they -- Ginger has moved her and everything. They cannot go see her because of financial reasons. And my mother misses them, and she's grieving for them.

Q. You mentioned, Ms. Pierce, I believe, in your pleadings, you allege that because your mother did not have a gel pad, that was one of the reasons that her wounds were not healing?

A. I never did say that, sir.

Q. Okay. Well she does have a gel pad now.

A. Because I talked with Ginger and everything on there. She didn't have the gel pad, and I told her, I says, "I hope that this bed is not going to be towards Mother's account because it's the same identical bed that Mother has right now," and she said, "The bed has already been paid for." I said, "I hope it doesn't come, it doesn't come out of Momma's account," is what I told her. And I told her that the gel -- she asked me was the gel pad there, and I said, "No, there is no gel pad. No nothing. What we wanted was the one that she had at the hospital." And she talked with the boy and the boy, said that they did not bring a gel pad, that they will bring the gel pad the next day or two.

Q. Ms. Pierce, have you ever brought outside food or drinks to your mother against the recommendation of her doctors?

A. Not against the recommendation of her doctors, no, I had not. I had brought her food but not against the recommendation of her doctor 'cause Silverado, all of them, sees me and everything I bring in. Nicole sees what I bring in. They said she cannot eat it - I don't get it. I bring her a milk shake. They said, "okay."

Q. Have you been present when your sister would

bring food or drinks that was not in conformity with the facility?

A. She never has. Sherry has never brought anything that was not okay with the facility or anything. She knew exactly what she brung in and saw whatever went on. They kept it in the kitchen and Silverado's constantly fed it to her during her lunch and breakfast times.

Q. Have you, Ms. Pierce, ever attended any of your mother's doctors' appointments with Ms. Lott?

A. I was supposed to attend two of them. One of them was, I was told by Silverado that she was going through a certain doctor there, a foot doctor, there in Kingwood. I went to the doctors they give me and everything, and I said -- and I waited and everything and they never showed up.

I foot the money to come driving up there. Nicole was there with Mother when they loaded and they left with the bus back to Silverado. And when we got in there, Nicole was giving all the paperwork to them and they said they did not know Ms. Willie Jo Mills or anything. She didn't have no appointment or anything like that. Nicole got upset, calls Ginger and Ginger -- then Nicole give me the phone, in other words, saying we're at the wrong place, whatever. They gave the wrong

address. I don't know if it was on purpose or what. I cannot say.

Then Ginger told me that she was -- she's on the, on the second floor, and I said, "There is no second floor at their facility or anything." And then she says, "Well are you supposed to be even here?" I said, "That's not where she told us to go." And she said, "Well, don't worry about it. I'll take care of it." I did make the comment, "How much is the estate going to charge for coming to the wrong address, wrong doctor's office?" I did ask and everything.

And then I was not informed of the second one that was about purex [sic] at Silverado that I found out about where it was at. I went up there to this meeting up there. Ginger was there and Nicole was there. And there was a little cramped room and the doctors didn't know Mother, none of Momma's history 'cause he was no -- they wanted to know had she been doing her exercise, had she been up trying to walk this leg or anything.

Q. What was the purpose of that doctor visit?

A. The X-ray, look at her broken leg to see what procedures it was. And he said that she had no quality of life. She did not need her leg operated on. That basically she didn't -- she wouldn't be a plus to

society basically 'cause she was old.

Q. Do you disagree with the doctor?

A. I sure do.

Q. Did you want to see your mother have surgery on her leg?

A. It was too late for surgery. She couldn't have surgery. They put the boot on her foot and her foot is turned completely. If you look at the pictures and look at everything that we presented to you, you would see her leg.

Also, she got this big of round with a big club [sic] on the bottom of her foot, and it is completely turned and she still, to this day, has a big raw sore on her foot. And Mother told me that they stepped on her foot. It's the reason why she got that. She doesn't wear shoes. Can't find shoes or anything. She doesn't have the boot, can't help from -- from that, and it is raw and oozing still.

Q. Ms. Pierce, does Ms. Lott keep communications with you about your mother's condition?

A. Other than whenever Nicole insisted on Mother going to the hospital with the pneumonia. I got a text. I did not know who it was from and everything. It was a anonymous number, whatever it was. And I asked where she was at because it was late in the afternoon when I

got it. And I said, "I was given the wrong room where she was where she was at." And I had run into with Nicole. She told me where she was at.

Q. Well, you testified that on at least two occasions, there were doctor visits that you communicated with Ms. Lott about?

A. I communicated on the first one. I told you that I did not get to visit with her because she was not there. She was sent to the wrong doctor. Silverado did not -- act real dumb about it, like they didn't know anything about it.

And the second one was about purex [sic], that they did not told me where she was going to. I went to it.

Q. So, it's your testimony that it's been either two or three occasions where Ms. Lott has communicated with you about your mother's care?

A. Well, describe what you mean by "mother's care."

Q. Anything having to do with your mother's care.

A. Well, she emailed me about one time. Says, "Congratultions. All right. Your mother no longer has to wear the boot," that her leg is healed. Never saw X-rays. Then never went to the doctor or anything confirm what she said on that.

And then this -- the other one was that Mother had pneumonia. I did not know it was her, that she was sent to the hospital. I found out she had pneumonia which I kind of confirmed and thought she had that anyway. That's when Nicole was insistent on the X-ray they did there at Hampton and said her lungs were clear.

Q. Has your visitation ever been revoked?

A. No. I did nothing, first of all.

MR. DITTA: Nothing further of this witness.

THE COURT: Okay.

MS. COMSTOCK: Couple of brief questions.

CROSS EXAMINATION

BY MS. COMSTOCK:

Q. So, you talked a little bit about Silverado in comparison to the food and care at The Hampton. And I'm wondering, was the food at Silverado more acceptable? Was she able to eat that food?

A. She was eating solid foods at Silverado. They would come and ask me what does, the cook, I think his name is Mike or Daniel - I get them mixed up because they had two: One that left and one that came.

Q. But the food was of better quality at Silverado than The Hampton?

A. Correct. But The Hampton, I can't say nothing too much wrong about it because I hadn't really eat the food at the Hampton because they did not really want you to share with them. You can bring your own food in, but they wanted to charge you for the food which a lot of people don't like that. They look to see -- a lot of people don't like what they like. And so at The Hampton, they charge you for a plate; and Silverado, they did not. And they asked what Mother likes and everything, trying to please Mother - the cook would. Silverado sent the cook.

Q. So, you looked at the facility. Was this facility do you think -- so, you looked at several facilities. Was your -- which facility do you think is most appropriate for your --

A. Well, the two that we looked at and everything.

Q. Which, I'm sorry? Just for the record, which two are those?

A. There was, of the top of my head ... now my brain is not working.

Q. Emeritus was one of them?

A. Yes, that was the newer one and everything. And they had people, and they had the level for the people that did walk around, do it for them and everything.

Then the second floor, they had for, like, Mother's condition. They had a level up there for dementia and Alzheimer's and everything in there that they had their own room. But they joined the bathrooms.

Then the third level is if she got sick or hurt or anything, they could take her through, give her IVs or anything. The next step they had to go to the hospital --

Q. Then just -- I don't mean to interrupt.

A. And another one.

Q. Excuse me. Is it, like, in The Woodlands?

A. We found that and visited a long time ago and they could have taken mother.

Q. The Terrace?

A. Yes. And they had a beautiful setting there, and the people were very nice in there, and the people were very pleasant.

Q. And they had a skilled unit there as well?

A. They did.

Q. Was it your impression that most of these facilities that if your mother required hospital treatment, she would go straight into the skilled nursing unit or she would have to go out, go out to the ER and then go back --

A. No, ma'am. They said she would, both

facilities said, they would check if she had a fracture, an infection, she would move up to the next, which is a full care unit that they could treat the urinary tract and everything and give her IVs and everything to re hydrate her and stuff.

But if like, if she looked like a heart attack or stroke then, yes, both facilities, all of them says that she has to go to the hospital.

Q. And I just wanted to clarify with you that -- I went to the same facility. And what they told me was that while she would be -- would be able to come back and have a stay as long as she needed, the skilled unit or personally transferred to the, to the other unit, she would first have to be taken to the hospital and given orders to be admitted on the skilled unit.

A. Only way she would stay in the personal skilled area was if she had another stroke or heart attack where they did have to remove her from that facility which is any facility. You have to, anywheres you go.

Q. But let me interrupt.

My point was, I was told that they wouldn't admit her directly from the assisted living into the skilled facility. I was told that they would have to put -- send her to the emergency room or the hospital and then readmit her under the skilled unit; is

that not what they told you?

A. That is not what they told us. They told us that she, as a urinary tract infection, that they would move her up to the skilled nursing facility to take care of her infection. But if her case would worsen, they would know where to go, cardiac or anything like that, life and death situation. They would they move her to the emergency room, to the hospital. But they would take care of, like, with a urinary tract infection, if she's got the first case of pneumonia, they would take care of that and everything. They would move her back to her facility.

Q. Back to my initial question.

Did you have a preference of what facility you would like to see your mother in - either of those two?

A. Okay. I have no preference. They both were nice.

Q. Okay. Just one more question.

And I'm just wondering if this has been your habit in the past.

Have you contacted Ms. Lott directly when you had concerns about your mother? And I'm not talking about "she needs to go to the hospital," "she's really in trouble"; I mean, just on a daily basis or on a

weekly basis?

A. She don't answer the phone, ma'am. I text. I would talk to her because people manipulate the answers and what they want to put down as we've seen on paperwork that's been told. But people manipulate if you text or email. There is nothing there. I can't change their email address when they send it to me because that's my request from David Dexel and 'cause he would manipulate your answers or what was going on. So, I refuse to talk to him 'cause he would add to or what made him look good.

Q. Okay. So, your answer then is that you don't direct calls directly -- you don't directly call Ginger to try to find out what's going on with your mother's medical care?

A. If there is a problem, I would. I have. Like I said, when I talk to her doctors and everything, we have been corresponding. We've been trying. We've been told not to call Ginger because of all the court proceedings and on and everything like that that's going on. And we're trying to abide by the Courts and everything. And I do contact her 'cause I told her I told her in words with her moving Mother, that Mother was not going to be happy there at The Hampton and everything. And we had a little discussion and she hung

up on me. She remembers that one. I recorded it.

Q. This is the last time you called her?

A. Mother was moved and --

Q. Moved from?

A. And I texted her and everything, asked her where Mother was at, how Mother was doing and everything. And I talked to her the other day about her bed and everything.

Q. Okay. So, did you stay with your mother -- Okay. So, when you say your mother was moved, did you mean from Silverado to Hampton property or from the hospital?

A. Both. I texted her on the bed and everything. And I talked to her and head nurse come up and said, "Please call Ginger and to talk it out."

THE COURT: Let's take a 5-minute break.

(Off the record)

THE COURT: I will remind you, Ms. Pierce, that you remain under oath.

MR. OSTROM: May I proceed, Your Honor?

THE COURT: Certainly.

MR. OSTROM: Just real quick.

CROSS EXAMINATION

BY MR. OSTROM:

Q. Ms. Pierce, you had suggested that you thought

it would be in your mother's best interest to have other family members available to visit your mother; is that right?

A. Correct.

Q. Who are those family members?

A. She has a nephew on my daddy's side, his name is Robert Lee Mills. She has her brother-in-law, Floyd Mills. And she has Billie Bernice, which is my daddy's sister. And she's got Shirley Rooks, which is my daddy's sister. And she's got Betty Jo, which is her -- Luckey -- which is her granddaughter, and she's got two great grand kids and everything: That's Natalie and Cameron. And then she's got the other children, her son, her grandson, Roy Scott Johnston and his two children and then just numerous friends: Jimmy and Kay Hightower. Just numerous, numerous friends that she's got.

Q. And do you think all those people would be beneficial for, you know, visiting your mother, right?

A. True.

Q. But none of those people have been kept out of the facility; is that right?

A. No, sir, they have not.

Q. Okay. And I think what you explained to the Court was this is a matter of distance, that they can't

travel to the current facility as well as they were able to travel to Silverado; is that right?

A. That is part of it, yes, sir.

Q. Okay. So, let's -- you said Roy Scott Johnston is one of the grand children?

A. Yes, the son.

Q. And where is he residing?

A. He's on Gulf Road in Cleveland.

Q. In Cleveland, Texas?

A. Yes, sir.

Q. And how frequent was he coming to visit Ms. Mills while she was in Silverado?

A. Well, he has seen her several times. I can't vouch exactly how many times he's been, but I know he has because we've got pictures of her at birthday parties with him, at Thanksgiving, Christmas and different times because they would go whenever I wasn't there.

Q. So, Roy would go during, I guess, holidays?

A. Well, holidays and whenever, like, on weekends some 'cause sometimes him and Sherry and all the kids would get together and go there on the kids' birthday and have a birthday party with Mother up there or Thanksgiving. Any kind of get-together, occasion, or whatever, just to go see her.

Q. Okay. And they're not currently able to do that now because Roy doesn't have the funds to go see Ms. Mills; is that right?

A. Almost everyone of them does not have the funds to go see her.

Q. Okay.

A. On fixed income and the distance and the cost of gas and the handicap, some of them are.

Q. And what's the distance difference between Silverado and The Hamptons?

A. Sir?

Q. What's the difference in distance between Silverado and The Hamptons?

A. I think it's like 40-something miles, the difference is, give or take, is what it is.

Q. So, the Ham -- Silverardo is located north of town, correct?

A. Yes, sir.

Q. And where is The Hamptons located?

A. It is west of town. Southwest. It's over off of 1960 and Willowbrook is where it's at. 290 -- 249, over in that area.

Q. Okay. And with regard to these individuals that could visit Ms. Mills, is it your testimony, currently under oath, that if she's moved to any other

facility, they would come and visit?

A. If it's in the Kingwood area that was close to them, yes, they would come see her.

Q. But it needs to be a facility in that area?

A. Correct.

Q. I think you testified or I want to make sure this is -- I'm accurate.

But of all the facilities you've looked at, if there is an emergent situation regarding your mother, they will send her to an ER or hospital for that treatment; is that right?

A. Yeah, in an emergency situation, yes, they would.

Q. Okay. So, currently, while your mother's at The Hamptons, there's no fear that she will not get treatment for any emergent situation that should happen to her. If she has a heart attack or a stroke, you're not concerned The Hamptons won't send her to the hospital?

A. No, I'm not concerned about that. No, I am not since she would not be sent.

Q. Okay.

MR. OSTROM: No further questions, Your Honor.

MS. SCHWAGER: No questions.

THE COURT: Thank you, Ms. Pierce; you are excused at this time.

Is there anything else you wish to offer, Ms. Schwager?

CLOSING ARGUMENT BY MR. HESTER:

MR. HESTER: Your Honor, I think the only thing I would say today, absent of us getting a judgment for the TRO, as an alternative, I think we need to do something about having Ms. Johnston reinstated visitation so that she can be there. She is the one that can be there with her mother more than the others. And I think it's important that she be with her mother. And frankly, her being dismissed from visitation has really been a mystery.

So, I think, as far as any kind of an emergency is concerned, right now, she doesn't get that -- enough people coming to see her. And a lot of this business about what she's doing is not true. All she wants to do is to be there to help her mother. And I think it's very important that her mother have her there. I don't think there's any question about that.

She's depressed. She's upset. She's upset because she's not there 'cause she doesn't understand it all. So, I would just say that from that standpoint, I think that's something we, at least, we

ought to try to do.

THE COURT: Okay. Well, as we all know, we're not here for the TRO. I mean, we're here, really, essentially, to determine whether or not the guardian has neglected or cruelly treated the Ward. That's really the only authority that I have to remove her at this moment.

And I have to say, based upon the evidence that you guys have presented, I don't see that there's an emergency situation number one; and number two, I don't find that the guardian has neglected or cruelly treated the Ward.

The point about visitation, though, I think is something that needs to be addressed. And you guys are free to present the case as you wish, but I will tell you, at this moment, I'm just not -- I don't see that we're in an emergency situation that would necessitate the immediate removal of Ms. Lott based upon the allegation that she's neglected or cruelly treated the Ward. And so -- but you guys are welcome to put on whatever testimony or evidence you wish.

CLOSING ARGUMENT BY MS. SCHWAGER:

MS. SCHWAGER: Your Honor, may I just add that there are, in our motion to remove, which I know we're not considering today, we need to formally hear

it, there are multiple, minimum standards that she's violated, and at least about five or six, and I would think that that constitutes neglect by definition.

THE COURT: I haven't heard any evidence as to neglect. I mean, it sounds like Ms. Mills has sitters with her, and at least one of the sitters, Nicole, is suitable. And that was the testimony of Ms. Pierce.

And Raylene, apparently, is more interested in watching game shows. So, that may be something that needs to be addressed, but it doesn't constitute neglect, necessarily. And she may have hit her head on the wheelchair, and that's unfortunate. And I completely -- you know, if it were my mother, I would be, perhaps, doing the same thing that you guys are doing. I don't want you to think that I don't sympathize with your position - it's just that I only have so much -- at this point, I can only remove her if I find that she's neglected her or cruelly treated your mother, and I just don't see evidence of that. So...

MS. SCHWAGER: You haven't found neglect when she's not seeing a specialist, when she's not eating, and Ms. Lott is not really, from the caretaker's perspective -- and we can call the caretaker at Silverado to let you know what she witnessed while Ms.

Lott was involved. She saw her maybe three times --

THE COURT: Not the kind of neglect that would be an emergency situation. And that's the key. So, I mean, like I say, it's -- we can go 'til 5, and you guys can present the evidence and testimony you wish.

CLOSING ARGUMENT BY MR. DITTA:

MR. DITTA: Your Honor, I think the only, at this point, maybe only thing to do is address the issue about reinstating visitation.

My client's been concerned about that without some supervision based on what we've heard today and what the record reflects even prior to today. So, short of Ms. Lott also being present when Ms. Johnston is present, then I'm not -- we're uncomfortable with her visiting her.

THE COURT: Right.

MS. SCHWAGER: I would object to that because that's going to make it impossible. She's got round-the-clock caregivers that are present. I would think that would be sufficient supervision.

MR. DITTA: Your Honor, it hasn't been sufficient.

THE COURT: Right. I mean, she's had that, and she's still, you know, she's had these

incidents of having her visitation revoked. And, so -- and I'm not ignoring you. I mean, I just can't -- I need to address -- I need to visit with the attorneys.

And I think that this just -- I think most of the attorneys in this room know that I really favor family involvement in guardianships. And any time it's possible, I want a family member to serve as a guardian. And I think that there are, really, two underlying problems here that are causing - or perhaps three underlying problems - that are -- that really brought us here today.

Number one, something that we did.

When Mr. Dexel voiced his desire to be -- to decline to serve as guardian of Ms. Mills, part of the reason he did that is because Silverado was not allowing Ms. Mills to stay there anymore. And I think he was just getting, you know, tired of the cycle of, you know -- or I don't know. I don't want to speak for him. But what I will say is that Silverado, we were trying to buy time so that we didn't have to do this. So, and Ms. Comstock can tell you this, perhaps better than I can, but we tried to work with Silverado and ask to keep Ms. Mills there for a little bit longer, but they refused. And so -- and Mr. Dexel was saying, "I want to resign."

So, when he resigned, we had an emergency situation because Ms. Mills was being kicked out of Silverado, and she need a placement immediately, and that's when Ms. Lott stepped up and said that she would serve as a guardian. And we didn't have an application for guardianship on file from the family members. And when we looked at the past history of the file, it showed just a lot of disharmony among the family members. And, so there were, you know, it didn't -- it seemed like that that needed to be worked out before we could, you know, have a family member appointed.

So, that's number one. I think that, you know, perhaps we should have had a hearing before Ms. Lott was, you know, an emergency hearing on her appointment. Maybe that would have avoided the, you know, some of the family's discontent with the court and perhaps Ms. Lott.

Another problem that I see is the fact that we have a woman who has three children, and she's -- and one of the children is -- has her visitation restricted. And I think, you know, I think that Ms. Johnston really has her mother's best interest at heart. I really do, Ms. Johnston. I know you do. My mom juices herself -- and she doesn't juice herself. She juices on her own, and she really believes in that,

and she's really healthy, I think, because of it. So, I mean, I understand that. But you've got to understand their situation. They don't know how this is -- they don't know what you're putting in it, you know, all that.

And with the saline solutions. I mean, that's another issue 'cause people get infections because of that too.

So, I think that if you guys came from a position of mutual respect for one another, as far as you and Ms. Lott and then, you know, The Hamptons, I think that some sort of a visitation plan could be worked out, and I want to spend some time on that today because I think it's important that your mother see you. And I think it's very important for her mental health to see all of her children.

On the other hand, I don't think it's unreasonable for Ms. Lott, at first, to be present during those visitations and just kind of create a, a, I guess, establish ground rules for that visitation at first. And so, you know, that may be a way to approach visitation.

A third issue I think that's creating a lot of dysfunction here is perhaps the fact that you guys want more communication than Ms. Lott is providing.

And so, maybe we can talk about how to address that. You know, maybe Ms. Lott can offer some solutions, perhaps to increase her, you know, increase the updates on your mom.

But Ms. Lott, apparently, has worked with your mother for a long time. And it seems like, you know, it's only recently after May 16 that things have really, you know, taken a turn for the worse. And so, hopefully, you know, we can, number one, my apology for not having a hearing when we appointed Ms. Lott, you know, just -- that's our fault; it's not your fault; it's not your attorney's fault; it's not their fault; it's our fault. You know, we should have, perhaps, thought it through a little bit better. But we were facing a woman that we felt like was being evicted from Silverado and had no placement, and she was losing her guardian. So, we considered that an emergency. And perhaps we should have been more open about the appointment of Ms. Lott.

Now I'm not saying that's what the statute requires, but I think that would have been the more human and reasonable thing to do, and I'm sorry that we didn't do that.

Yes?

MS. JOHNSTON: Ms. Butts, I would say one

thing with David and even Ginger.

The first time I met them, we were, as a getting-to-know process, we were new at this, and we had to find our place, you know, and David's authority. We never questioned his authority. And even Ginger, when we met, until May of this year, we had a pretty good relationship. I could call you. You'd do just about anything I'd ask you to do. And then a new administrator came to Silverado. Never met this woman in my life until the day they moved Mother. And what she did - I don't know; what she told David - I don't know. But from that day on, our relationship has been strained. And I do believe that the administrator at Silverado has put a great deal into this, and David should have listened to me 'cause we had a relationship for years, and he knew that I would never lie to him about my mother's health. And Ginger knew that also. But I take Mother's health and wellbeing very serious, and I told all them that I'm her eyes and ears. I live close. I'm not married. I spent a lot of time there.

And I would like the fact if, during this visitation work out, if we can get -- if we can get Ginger to make arrangements to move her over to Emeritus to get this all straightened out, it would really help the family.

THE COURT: Well, it might help the family, but I remember when she was moving from Silverado to The Hamptons, that we were concerned that was going to kill her. And so, that was -- I'm not interested in another move. And just because they may have skilled nursing at another place, the -- she may eventually have to go to skilled nursing, but until she requires the skilled nursing, you know, then --

MS. JOHNSTON: Well, Ms. Butts, everybody's putting their eyes and ears on me. My question to the Court and to Ms. Lott is:

We brought these issues up about Mother's care, and I'm breaking my neck to please everybody, but what is The Hampton doing to reassure Ms. Lott and the Court and even me that my mother's wellbeing, that she won't be dropped, she needs a good bed, all these things that it's not about Mother - it's about my restrictive visitation with her.

THE COURT: Right. Well, Ms. Lott, can we address those two issues: Number one, the visitation?

Do you have any ideas about how the visitation can be structured so that, so that it's in the best interest of Ms. Mills while at the same time satisfying the desire of her daughter too?

MS. LOTT: Well, I know Sherry works

different hours, different shifts at work and stuff. If Sherry wants to give me a couple of days and times and stuff that she can go visit her mother, I'll be happy to meet her there.

THE COURT: Okay. So, can she do it like once a week?

MS. LOTT: Sure.

THE COURT: Does that sound okay to you?

MS. JOHNSTON: Anything is fine. But I would like to also get to have something that's outlined. Like at work, if something is going south where we have an issue, that I can address her, and she will reassure me she will get back with me and treat this as a serious thing to my mother. Not that I'm trying to make your job hard, but my mother is sitting there getting banged up, and her health is deteriorating. We want to build her up to where if she does move, if we have the opportunity to move her, that she doesn't have to be moved in an ambulance. What is wrong with that?

THE COURT: I don't -- I think that was the second issue --

MS. JOHNSTON: Why does she have to stay there?

MS. LOTT: Everything's been addressed

that they talked about, Judge Butts

THE COURT: Okay. Well, can you tell me about the communication and what -- how can we improve the communication going forward? Is it possible to, in your experience, is it possible to come up with a plan that will satisfy their needs for communication?

MS. LOTT: There -- I do have one guardianship that I do -- we have a phone conference once a month, you know, to interact if they have questions and stuff. My concern is that they have said they record everything. I am not comfortable with being recorded. Should they choose to interact in emails so that way those can be printed out and those can't be distorted. I do not mind doing the emails. But as far as being recorded, no.

THE COURT: Okay. And if there's any major changes or even minor changes in their mother's condition, can you email them to let them know, like, just give them updates; and then every month, send them an email, just a status, even if nothing's changed?

MS. LOTT: Yes, ma'am.

THE COURT: Okay.

MS. SCHWAGER: Judge Butts, I have a problem with it going forward. The relationship is so sour and so strained that there's no trust. I mean,

Ginger just said that she doesn't want things recorded - she wants things on paper so that they can't be distorted --

THE COURT: Well, that's what your client said.

MS. SCHWAGER: Right. I mean, doesn't --

THE COURT: That's what Cindy said, not your client.

MS. SCHWAGER: Yeah. Right. Cindy's our client, too. Doesn't that just tell you that you have two sides that trust each other as far as they can throw each other? Two sides that are so untrustworthy and suspicious of each other. I mean, going forward, there were plans to file a complaint to the guardianship certification board. I'm sure that's going to strain the relationship even further.

THE COURT: Well, that's not what I heard from -- that's not what I heard, frankly, from your client, Ms. Johnston. I mean, she said that she felt like the relationships started to go sour because of the administrator at Silverado was creating trouble between them, between them both.

What I see is people who worked together in the past well and that the relationship, you know, started to go south because, you know, what Ms. Johnston

said that the administrator at Silverado was creating issues, maybe telling Ginger one thing and telling her another. I don't know --

MS. SCHWAGER: I don't think -- could Sherry answer that?

MS. JOHNSTON: Ms. Butts, what I told you was that we had a relationship with each other, and we did work fairly decent until when Megan Christopher came into the picture.

David Dexel and Ginger Lott no longer, when I would give them emails or even have conversations with them, I was automatically -- my information was of no value, that Ms. Christopher, who doesn't even know my mother, other than through the medical books and the paperwork that she looked at, she doesn't know her personalities, doesn't know nothing about the history of Silverado. The only thing I told David is history. None of that's true no more; I can't be trustworthy; and all of a sudden that I'm a villain and Ms. Christopher and these, Ms. Lott and Mr. Dexel, all of a sudden, they pair up, and I'm a troublemaker. I get evicted.

So, how can I -- I mean, I want to see my mother. And whatever y'all set in boundaries, I'm going to have to live by. But I'm saying there is no trust here. I mean, I have to -- I want something more than

just her testimony 'cause right, now like I told David, her testimony is zero in my book.

THE COURT: Well, I, you know, if that's true -- I mean --

MS. JOHNSTON: I don't want to come up here with you again and have all this stuff slammed against me, and I don't want to slam-dunk her. I just want to be whatever says is truthful.

COURT'S RULING:

THE COURT: Okay. Well, right now, I mean, I've already determined that she's not going to be removed today. I don't even have the authority to remove her.

MS. JOHNSTON: That's fine. I was just saying --

THE COURT: Okay. I do have the authority to remove her, but I don't have the evidence to support that removal; and so, at this point, then whether the relationship is soured or not, it, you know, she's not going to be removed today.

And so what I'm suggesting to everyone is that you guys try to get back on track again. Try to start working together like you were --

MS. JOHNSTON: But what I'm saying is, I need to have some, some way -- I don't like the idea

that, you know, Ms. Lott is going to email me once a month when she sees fit and tells me what she wants me to hear.

THE COURT: It's not just once a month. This is --

MS. JOHNSTON: I don't trust nothing she says on paper, but whatever you say to do, I'm going to do.

THE COURT: Well, at this point, I mean, that's all you've got. She's not going to be removed today. So, if it means nothing to you, I'm not going to require her to do it 'cause it costs your mother money for her to do it.

So, do you want the email updates or not?

MS. JOHNSTON: Yes, I do.

THE COURT: Will you please not record the conversations that you have with Ms. Lott because I don't -- I think that's -- it may be legal in Texas to do that, but I think that it's unreasonable to do that. And if you don't feel like you can talk with her on the phone without recording, then and if she feels like she's being recorded, then I'm just going to ask you to email her and put everything, you know, in emails to her 'cause I really don't think it's appropriate to --

MS. JOHNSTON: The only thing I ask is

that she respond back. I mean, if she don't want to talk on the phone - that's fine; but I am involved in Mother's life. I have been since I was a small girl. And we're very close and --

THE COURT: I see that. And like I said, I know you have your mom's best interest at heart. But Ginger Lott is her -- her neck is on the line with regard to your mom's treatment. And so if she tells you not to bring the juice in or if she tells you don't do the breathing treatments or if she tells you, you know, don't bring in hamburgers - you're going to have to follow these rules because it's --

MS. JOHNSTON: I understand.

THE COURT: -- those things are the, under the authority of the guardian.

So, when you visit with her, she's going to set down some ground rules and, you know, when she accompanies you to the visitation, and then it will be up to her, whenever she decides, that she no longer needs to accompany you on those visitations.

But I think that's how we need to move forward.

COURT'S FURTHER RULING:

THE COURT: And so just to summarize everything.

Ms. Lott's agreeing to email both of you, and I would imagine Larry too, once a month just to give you a status update on your mom. And then any time there is a major development with your mom, she's going to email you.

And with regard to visitation, she's going to work with you on visitation so that you may visit her no less than one time a week, and she will accompany you on those visitations unless and until she finds that she no longer needs to accompany you.

And with regard to those visitations, she's going to set up the ground rules and perhaps even relax those rules as time goes by. But I think, I think that's how we need to move forward.

And anything that I didn't address that I need to?

MS. PIERCE: Can I ask one question, please?

THE COURT: Sure.

MS. PIERCE: Can we, when we get Mother better, can we move her to her family? 'Cause she's going to die. She's going to die within a month. She's not going to live. It's going to be their fault because Mother loves her family dearly. Mother will shrivel and die.

THE COURT: When you say, "move her back to her family -- "

MS. PIERCE: Move her over there to that side over there, back over there to 59 over in Kingwood. That's all we're asking so she can be with her family --

THE COURT: Okay. That's going --

MS. PIERCE: -- she's going to die --

THE COURT: -- to be up to the guardian because I'm not --

MS. PIERCE: It's going to be in their hands because --

THE COURT: No, it's not --

MS. PIERCE: -- and I told Giner she's going to die. It is too because she won't move her because she done this. They had months and months to move Mother and they dragged their feet. But that's their --

THE COURT: When I -- when we were involved in the move, in the placement of your mom, when we got involved, when David Dexel was resigning, we were told -- and one of the reasons why we were so compelled to get involved and talk to Silverado was because we felt like your mother would not survive the transfer.

And so, to transfer her one more time when she's obviously even more frail than she was when Ms.

Lott took over, you know, that just makes me really nervous. And to be just miles closer to her family, I mean, if it's a 30-miles difference from the Woodlands, is that where Emeritus is?

MS. JOHNSTON: No, it's Kingwood.

THE COURT: Kingwood. Well, Kingwood versus the Willowbrook area, that's a good 45 minutes.

MS. JOHNSTON: Well, Ms. Butts, we can do this all day. I'm going to say one more thing, and I'll sit down.

You know, y'all saying this is an emergency hearing. Ginger Lott and David Dexel, Ms. Comstock wasn't involved yet, but she knew of the strained relationship we were dealing with Silverado. She just didn't walk in one day and say, I'm going to jump in [sic]. She walked this pathway with us. And Ms. Lott knew that there was trouble at Silverado. And she knew the whole time she walked with David and the whole time she went through the investigation with Ms. Comstock, Ms. Lott was participating. So, she -- and the Court knew all this. And why is it that y'all can have a court hearing and everybody knows the history of this and nobody knows that this is not the truthful picture of what is really going on? I feel like that this, Ms. Lott, they knew that there was trouble, and

they should have had a consideration to know that the family was involved in this. We weren't just out in the cold creating a problem. They knew this the whole way, and you were deceived, this Court was deceived --

THE COURT: I don't think we were deceived because we knew about the -- we knew about the --

MS. JOHNSTON: Did you know about the emails that we talked to David all during the year, and we showed him that we wanted to move her and all this stuff? That Ms. Lott knew about?

THE COURT: Well, I knew what was in Ms. Comstock's report.

MS. JOHNSTON: Ms. Comstock knew about them. I gave them to her.

THE COURT: Well, I knew what was in Ms. Comstock's report. But I apologize for not holding a hearing when Ms. Lott was appointed, okay. And I gave you the reasons why I felt it was necessary. And in hindsight, I believed that though it was statutorily, you know, I had the statutory authority to do it, I don't think that in hindsight it was the right thing to do. And so --

MS. JOHNSTON: I agree.

THE COURT: -- I will -- I apologize. And a lot of that is my fault.

I don't think I was deceived. I think I saw a family in disharmony. I saw a woman being evicted, and I saw an emergency need for placement. And I was told that this woman would probably not survive the transfer.

And so, I was working -- my concern was more focused on your mom and trying to get Silverado to keep her for a little bit longer so that we had more options open to us.

MS. JOHNSTON: Okay.

THE COURT: So, that's, you know, that's where I was at the time, okay.

MS. SCHWAGER: Your Honor, I'd just like to add one thing.

Rather than Ms. Mills being evicted, and that's been their position because I guess it sounds -- essentially what happened was, Sherry uncovered more and more neglect, and they wanted to keep her from, you know, from finding it. That's why no pictures --

THE COURT: I mean, but that's your position. And that's not really what --

MS. SCHWAGER: Well, why is it that --

THE COURT: -- part of the report said that Sherry was taking pictures of the other residents, and I can see that being a huge problem. It's neither

here nor there. I don't care why Silverado evicted her. They did. And we were trying to get -- wait 'til she was more stabilized and we had more options. But, you know, we felt like it was an emergency situation and that she needed placement and a new guardian.

MS. JOHNSTON: Well, Ms. Butts, if we would have had that hearing, like you said, this would all came out and things would have been done a lot differently.

THE COURT: Well, it would have, but your mom -- we didn't have that kind of time.

MS. JOHNSTON: That's what I'm saying --

THE COURT: And if you remember --

MS. JOHNSTON: -- spent the time, this wouldn't be going on. But anyway, we're at a point now we got to get this visitation squared away of what I can do and what I can't do. We're running out of time.

THE COURT: Okay.

MR. OSTROM: Your Honor?

THE COURT: Yes?

MR. OSTROM: Whatever protocol Ms. Lott lays out for the family, I think she needs to do it openly. I mean, whatever the rules are that the visitation has to be on, there has to be an agreement that Cindy is going to cooperate in that process and

that because Cindy doesn't have the agreement with Ms. Lott. The agreement is between Ms. Lott and Sherry. But if Cindy goes in there and does something opposite that agreement, now we're just back to --

MS. PIERCE: So, you're trying to prevent me from my mother, is what you're trying to do?

THE COURT: No. No. That's not what he's doing. He's just saying what's good for the goose is good for the gander.

MR. OSTROM: Open disclosure of how we're going to deal with Mother, what we can do/what we can't do, a protocol in getting permission because otherwise --

MS. JOHNSTON: Change her diaper --

MR. OSTROM: -- because otherwise --

MS. JOHNSTON: -- to see the mess my mother's in.

MR. OSTROM: Because otherwise, what's going to happen is, you got one set of rules here and the other side that's kind of left loose. And I can anticipate we're going to have additional problems.

MS. JOHNSTON: That's not true.

THE COURT: Okay. This is how I think we should approach it. And you guys - I've been really relaxed. I mean, this is a conference, and I'm trying

to give you a lot of latitude, okay, but you can't -- our court reporter, she's skilled, but she's not skilled enough to take down two voices at the same time.

THE COURT'S FURTHER RULING:

THE COURT: So, this is what I'm going to do:

I'm going to, I'm going to create an order tomorrow that just sets out -- I don't frankly know how I'm going to do this exactly, but I'm going to ask Ms. Lott to do some certain things.

She's going to -- and then -- I guess I'm going to have to work with her on crafting that order. But if she tells Ms. Johnston, "don't bring juice," well Ms. Pierce can't bring juice. But, really, I mean, Ms. Johnston, at this point, is the only one that needs to be accompanied by Ms. Lott on visitation. But, all of the rules that would apply to Ms. Johnston, of course are going to apply to Larry and to Ms. Pierce.

So, but I'm going to -- I'll work with Ms. Lott and try to craft an order, and we'll -- it won't be in secret. I'm going to email and copy all the attorneys on this email whenever I correspond with Ms. Lott. I mean, you won't have to worry about any ex parte. And then Ms. Lott, will reply to all so that we're all involved in the conversation.

But we will have an order in place that kind of just sets out the visitation and the rules. Does that sound --

MS. JOHNSTON: Ms. Butts, may I say one thing?

You know, since the juice and all that stuff, I would still like to have my mother have juice. If I could ask the Court or Ms. Lott to let me bring this stuff to her, and I'll tell you exactly what's in it or they can make it --

THE COURT: Well, you'll have to work with, you know, Ms. Lott --

MS. JOHNSTON: That's very important that Mother gets that. You know, I don't have to give it to her or whoever. Or if they want to see if they can make it thick or thin, however they want to.

THE COURT: Well, that's going to be completely up to Ms. Lott. I'm not going to get involved in what's in her juice. That's something that Ms. Lott is going to have to worry about. But if she says, you know, if she says she'll accept the juice and have it fed to your mother, you know, I've no issue with that. And if she says she doesn't want it, you're going to have to respect that.

MS. JOHNSTON: I would respect that. I'm

just asking the Court or Ms. Lott to take into consideration my mother's nutrition, what she's getting.

THE COURT: I hear you. I do hear you, and I'd want to do the same for my mom.

MS. JOHNSTON: Thank you.

THE COURT: Thank you.

MR. DITTA: May I make one more suggestion regarding the order?

Since it's the concern of Ms. Pierce and Ms. Johnston about these other family members who can't afford to come see Ms. Mills, I don't see why we couldn't have some sort of reimbursement of their expenses for --

MS. PIERCE: They don't request it. They wouldn't do that 'cause they're proud. They love her. They don't want any money from her.

THE COURT: But if it were necessary for her mental health, and we see that a lot where travel is permitted and so, but --

MR. DITTA: I think they could be reimbursed out of her trust; but otherwise, I guess we're hearing that's not how they want to handle it. But anyway, that's just another suggestion.

MS. PIERCE: Her children is what I'm saying --

MS. JOHNSTON: Sir, that's not what we said. And what we said, we'll go by if the children want to ask for reimbursement, they will. We just want our family members to be able to see Momma and Momma be able to interact.

THE COURT: And I think Mr. Ditta is trying to come up with creative solutions --

MS. JOHNSTON: That's fine. I'm not against anything like that. All I'm saying is, you know, we're just moving right now seeing Mother, make sure she gets good food in her, that she gets a good bed and skin care and these files have got to stop.

MS. SCHWAGER: Judge, am I to understand that this is a temporary solution that we're -- you know, a temporary order until we have further hearings to bring the evidence to your attention?

THE COURT: Yes.

MS. SCHWAGER: Okay.

MR. OSTROM: And, Your Honor, so that kind of leads me into my next point.

We have a setting December 30th on a motion to dismiss their pleadings. Are we going to have a docket control entered in place with regard to their application, and how are we going to effective -- or effect service and all these things? I mean, I think we

have to leave here today with whatever they have do to start the clock and then a timeframe of where we're going.

THE COURT: Are you asking for a docket control order?

MR. OSTROM: Yes, Your Honor.

THE COURT: Well, I think that's perfect. We need that. We have everybody here. Why not make the best use of the next 13 minutes?

MS. COMSTOCK: Your Honor, I have one comment to add.

Part of -- it seems to me the part of the problems that were caused with care at Silverado involved the photographing of things and some of the interaction with other residents in that facility. If we can extend the band on recording to other times with the caregivers and when the doctors are present and that sort of thing because I think it really does affect the relationship of the caregivers and the health providers with --

THE COURT: I can completely see that. If my mom were there, I wouldn't want her photographed. So --

MS. JOHNSTON: I'm sorry --

THE COURT: I've really heard -- we've got

to spend our time a little bit more productively, I apologize. And these attorneys have their work cut out for them because at 5, they've got to leave, but they've got to leave me with a docket control order, okay.

So, and I'll email everybody. I'll give them like a basic order, and then you guys email me back with suggestions on what you need to see in that order. Okay? And I'll leave you guys.

MR. OSTROM: Do you have a preference of when you would like to have this matter tried and resolved? I mean, how long do you -- you obviously don't want us going out too far into the future with these outstanding issues; do you have a preference on how quickly you'd like to see us get this to a trial or resolution?

THE COURT: Just as soon as we can. I mean, I've got -- you'll have to look at our calendar and work with Ms. Fox on that. But, yes, as soon as possible. I assume that's what you guys would want too.

And if you guys wouldn't mind, on the docket control order, if you could write all of your email addresses on there - that'd be helpful and include Ms. Lott on that. She doesn't have to be on the docket control order, but I'll need her email address.

Thank you, guys.

The State of Texas)
County of Harris)

I, Hipolita Lopez, Official Court Reporter in and for the Probate Court Number Four of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $934.00 and was paid by Ms. Sherry Johnston.

WITNESS MY OFFICIAL HAND this the 3rd day of August, 2016.

COPY

/s/ Hipolita G. Lopez
HIPOLITA G. LOPEZ, Texas CSR #6298
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PROBATE COURT 4

CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY,**
TEXAS		
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

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FIRST AMENDED SECOND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER (TRO) VS. GINGER LOTT

COMES NOW, CINDY PIERCE ("APPLICANT") and alternate/success APPLICANT, BETTY JO LUCKEY, and files this FIRST "AMENDED" SECOND EMERGENCY APPLIATION FOR TEMPORARY RESTRAINING ORDER AGAINST GINGER LOTT, the guardian of the person of WILLIE JO MILLS ("MILLS"), an incapacitated person. Pierce AND Luckey pray that Honorable Judge Butts remove GINGER LOTT for cruelty, gross neglect, and misconduct, including misrepresentations to this Honorable Judge in the December 5, 2013 TRO hearing, and possible spoliation of evidence, which prove her interests are "adverse interests", her conduct notoriously bad with no qualification to serve WILLIE JO MILLS, incapacitated under the Estates Code.

The foregoing, without evidence, may seem outrageous, but the evidence will show that they are absolutely not. GINGER LOTT poses an imminent irreparable threat of harm to WILLIE JO MILLS, for which there is no remedy at law and must be removed or forced to resign by this First Amended Second Temporary Restraining Order or otherwise as the Estates Code permits. She is covering her gross neglect, reckless disregard, abuse of authority, conduct falling below the minimum standards for guardians and elder abuse/neglect to protect her, rather than protecting WILLIE JO MILLS, incapacitated. If

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LOTT is not removed pursuant to the Estates Code, PIERCE AND LUCKEY move that this Court ORDER GINGER LOTT TO RESIGN as guardian immediately and provide the reporting required, turning over all records and reports, as required by Statute. *In support thereof, APPLICANTS provide the affidavit of SHERRY JOHNSTON, attesting to all facts herein and the truth of all statements made in the attached Letter to the Honorable Judge Christine Butts from Pierce, Luckey and Johnston, previously sworn by affidavit.*

LIES, DECEPTION AND MISCONDUCT

1. **The most shocking evidence for which this TRO is sought is GINGER and HAMPTON SERNOR LIVING'S apparent illegal spoliation of evidence and "cover up" by Ginger of lies and reckless disregard, gross neglect, and cruelty to the ward and her family members. Her lies by omission to this Court can be found in her own billing and in the secret letter passed from the attendant to the Hospital admitting MILLS stating that MILLS has pus in her urine—she lied to Sherry denying pus, stating it was sediments. She is further believed to have participated with Hampton in destroying records or cutting them and otherwise ensuring that Methodist Hospital did not receive records on Mrs. Mills' medication, drugs, food intake, fluid intake, output, urination, bowel movements, so the Dr. would have no history to evaluate her dire condition.**
2. Even more egregious is that GINGER SUE LOTT LIED to this honorable Judge as did her lawyer, Louis Ditta by failing to mention MILLS was taken to the Emergency Room for the black eyes and injuries received when they dropped her December 4, 2013 for which APPLICANTS FILED THE FIRST TRO December 5, 2014. During the time period in which all parties sat though the TRO hearing about MILLS having black eyes

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and bed sores (which she has now again), skin tears, a laceration to the head, and many other instances of neglect, GINGER LOTT said nothing about taking MILLS to the Emergency Room for personnel dropping her and injuring her during the TRO hearing. Under the dire circumstances of an emergency TRO for the same black eyes, laceration and injuries she received GINGER AND HER LAWYER had a DUTY TO DISCLOSE! *See Ginger's Bill for Services wherein she states that she took MILLS to the ER on 12/4/13.* Ray Lynn, the care provider/sitter for MILLS, confirmed that MILLS was taken to the Emergency Room after being dropped because they didn't know how to handle her. This is disturbing.

3. **THIS COURT SHOULD DISCHARGE GINGER LOTT FOR NOT HAVING THE DECENCY TO MEET WILLIE JO MILLS AT THE HOSPITAL AND CHECK HER IN! WILLIE JO MILLS IS INCOMPETENT BUT HAD TO SIGN HER OWN SELF-IN BECAUSE HER GUARDIAN WASN'T THERE!! MILLS WAS TAKEN BY AMBULANCE WITH SHERRY JOHNSTON FOLLOWING AND AN AIDE WHO KNEW ALMOST NOTHING ABOUT MRS. MILLS. THIS IS INTOLERABLE!**

4. Ginger continues to minimize WILLIE JO MILLS' condition and is subsequently proved wrong by physicians. Recently, she wrote an email stating that MILLS would be released from Methodist for a mere "UTI" (notwithstanding these can be fatal for the paralyzed elderly) and minimized MILLS' near death, when the physician at Methodist ordered MILLS to rehabilitation for 20 days to recover from malnutrition, dehydration, a urinary tract infection. GINGER ALSO FAILED TO MENTION THAT WHILE MILLS HAD BEEN STARVING TO DEATH (as evidenced by ketones in urine and chemicals

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showing her muscles and fat were eaten by her own body for the malnutrition). She is also believed to have lied about the swallowing function test she still refuses to provide under advice of counsel. SHERRY JOHNSTON was told my hospital personnel months ago once a swallow function test was performed that Mrs. Mills passed. SHERRY JOHNSTON was again told by Methodist Hospital that Mrs. Mills passed the swallow function test they performed and should be eating and drinking. Methodist found she could swallow just fine and reinstated food and water.

5. MILLS is SEVERELY ILL AND MAY DIE. SHE WOULD HAVE DIED WITHOUT SHERRY JOHNSTON'S INTERVENION AND LOTT STILL MINIMIZES THE SEVERITY OF MRS. MILLS' POOR PROGNOSIS. MILLS had a severe enough case of malnutrition/dehydration/infection that the Dr. ordered 20 days of rehabilitation with IVs in skilled nursing. Mrs. Mills is not improving. The tragic thing is that these things were entirely preventable, but GINGER LOTT was so reckless and incompetent, she preferred punishing SHERRY JOHNSTON and arguing over seeing to the dire health needs of MILLS.

6. Howard Reiner and Ginger Lott were said to have visited MILLS by Hampton personnel before Sherry visited and called 911. Apparently, Neither thought her extremely ill state warranted action despite the fact that Candice Schwager sent a long series of urgent, emergency emails and medical periodicals on dehydration, dangers of statin drugs, malnutrition, urinary tracts ending in death for the paralyzed, and neglect in these facilities Nationwide, demanding they take immediate action and call an ambulance! *See all emails and medical periodicals attached, begging them to take action, a true and correct copy of the same is attached hereto and incorporated by reference.*

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PROTECTING THE GUARDIANSHIP

7. APPLICANTS pray the Court will intervene because SOME **lawyers in this case are not motivated by protecting WILLIE JO MILLS, as we all should be. In recent hearings, lawyers have said they were "PROTECTING THE GUARDIANSHIP." That speaks volumes, given SHERRY JOHNSTON, CINDY PIERCE, AND BETTY JO LUCKEY HAVE ALWAYS BEEN PROTECTING THE WARD, WILLIE JO MILLS—WHOM THEY LOVE VERY MUCH.**

8. Rather than transparency, as one would expect where a woman's life is at stake, Ginger Lott AND Louis Ditta are engaged in obstructionist behavior, refusing to even answer multiple requests for depositions, discovery, or provide records GINGER agreed to provide months ago and recanted only recently on advice of counsel. Other lawyers are refusing WILLIE JO MILLS' Constitutional Right to jury trial, as well as APPLICANTS' and trying every legal maneuver possible to avoid CINDY PIERCE having guardianship of their mother, so she and the family can simply be with their mother in what may be her last days—without having the hostile environment they are enduring now. If Mrs. Mills dies, they will never be given the peace they deserve, having done nothing wrong. They will only have this harassing, expensive, intimidating, hostile situation to remember.

9. AMBUSHING APPLICANTS WITH NO DISCOVERY OR DUE PROCESS, OPPOSING COUNSEL'S OBJECTIVE IS TO DEPRIVE MILLS AND APPLICANTS OF A JURY TRIAL. APPLICANTS TRUST THE INTEGRITY OF THIS HONORABLE JUDGE OR WOULD HAVE ACCEPTED THE INVITATION TO RECUSE. THEY SIMPLY WANT THEIR CONSTITUTIONAL RIGHTS OBSERVED AND DUE PROCESS SO THAT AT THE END, THEY CAN FEEL THEY DID

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EVERYTHING THE CONSTITUTION PERMITS, WIN OR LOSE. NEVERTHELESS, APPLICANTS CAN'T HELP BUT TO QUESTION THE MOVITES OF THOSE WHO ARE TRYING SO HARD TO VIOLATE THEIR CONSTITUTIONAL RIGHTS—AND MRS. MILLS, WHO HAS NEVER BEEN GIVEN THIS RIGHT.

10. The refusal to provide discovery by LOTT AND DITTA, who insist there's no reason for concern, is suspect. Just after the Court's last hearing on April 5, 2014, Schwager stated in Court that she would file a Motion to Continue and Extend so that discovery which had been put on hold by order of the Court—could be completed. **Ditta came into the conference room where SHERRY JOHNSTON, BILL HESTER AND CANDICE SCHWAGER were speaking (outrageously complaining that we would tape our own hearing for memory's sake) and offered to extend the deadline for his own benefit too.** Schwager proposed May 9th and he shook his head in agreement, stating that he saw no reason for the limit currently imposed. In an about face of 180 degrees, once he read the discovery served upon him, he showed complete deception and sarcasm, referring Schwager to Rule 11—sending the message that regardless of what he said, sorry. Louis Ditta's sarcastic "you are referred to Rule 11 of the Texas Rules is shameful.

8. **The only parties who have advocated for WILLIE JO MILLS' best interests throughout this case are SHERRY JOHNSTON, CINDY PIERCE, AND BETTY JO LUCKEY.** They have done so at the expense of tens of thousands of dollars and sanctions each time an attorney can find even the smallest error to earn $500. This "gamesmanship" is outrageous and unacceptable and must end now. APPLICANTS pray the Judge will hear them and enter the Attached First Amended SECOND Application Temporary Restraining Order now before it is too late. *See Affidavit of Sherry Johnston, incorporated herein by*

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reference and Letter to the Honorable Judge Christine Butts from Pierce, Luckey and Johnston, attached hereto and incorporated by reference.

IMMINENT IRREPARABLE HARM FOR TRO

9. **APPLICANTS' REQUEST FOR THIS FIRST AMENDED SECOND TEMPORARY RESTRAINING ORDER is justified by the imminent, irreparable injury that WILLIE JO MILLS will face if this TRO is denied**. GINGER is making medical decisions with physicians on WILLIE JO MILLS' health which are further harming her. LOTT continues to minimize another close call for WILLIE JO MILLS, WHO IS 86 AND CANNOT KEEP RIDING THIS ROLLERCOASTER OF MALNUTRITION, DEHYDRATION, INFECTION, IMMOBILITY, BEDSORES, INJURIES, and NEGLECT much longer. WILLIE JO MILLS is in rehabilitation because of Ginger Lott's neglect, leaving her dehydrated, malnourished, with a severe urinary tract infection, hardly urinating and with no bowel movements for 4+ days. She is not getting better, not eating or drinking yet. APPLICANTS fear the worst. WILLIE JO MILLS was beginning to eat and drink at Methodist, but the care was better. Now, with an imminent plan to move her to the assisted living prior to the 20 days recommended by Methodist (as early as this Friday, May 2, 2014), death is imminent and it will be miraculous if things turn out otherwise. **WILLIE JO MILLS, INCAPACITATED, has cheated death by the extraordinary efforts of her daughter, *once again*, to get her the help she needed—neglected by LOTT**.SHERRY JOHNSTON, CINDY PIERCE, AND BETTY JO LUCKEY ARE WEARY AND STRESSED, CONSTANTLY HAVING TO WATCH HER MOTHER'S BACK BECAUSE SHE IS NOT IN GOOD HANDS. Time and time again, it is Sherry or Cindy who sound the alarms, saving WILLIE JO'S life.

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11. Given that Lott has a video camera in her room installed, she should know everything and each time, she knows nothing! With respect to the video camera: there were two and LOTT agreed for them to be there and knew they were there. Furthermore, everyone had notice they were there with a large sign on the door, stating VIDEO SURVEILLANCE was occurring in MILLS' room. NO attorney-client communications were ever intercepted by APPLICANTS or their ATTORNEYS involving any party to this case at any time. ***SCHWAGER has TO DATE, never saw or heard any video or audio footage of REINER speaking to anyone***.. **Schwager has not seen or heard the tape at issue to date.** Schwager had tons of photographs and video that needed to be produced on April 21, 2014. SHERRY stored videos in dropbox and forwarded them. Moreover, SHERRY JOHNSTON would and did not witness any attorney-client communcations either. *See Affidavit of Sherry Johnston.*

12. **Schwager's statement about Reiner not having his client's interests at heart involved two things: (1) During the first hearing he attended, Reiner walked in and stated something to the effect of "I thought we had this matter settled four years ago." (Schwager understood this to mean he intended to assert waiver and he did). (2) Mills has <u>never</u> stated that she wants GINGER LOTT as her guardian. <u>She DOES NOT</u>. She wants her daughter taking care of her, period and CINDY AS HER GUARDIAN. APPLICANTS HAVE TAPE RECORDINGS OF WILLIE JO TELLING THE COURT THAT SHE WANTS HER GIRLS TAKING CARE OF HER. HER 2008 POWER OF ATTORNEY NAMED CINDY. YET, REINER IS FIGHTING CINDY'S APPOINTMENT, arguing waiver.**

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13. At the December 2013 hearing, Ginger reaffirmed that she will share the records requested, medical information, and allow a drop cam is installed for all to access. SHERRY JOHNSTON told her she had already ordered and paid for one and would have it there. GINGER LOTT, without explanation, called ADT and had another camera placed in the room—but no access has been shared. This is in emails produced to the Court between Ginger and Sherry. Ginger told this Court at the December hearing that she would cooperate. When the Court is not looking, her "good faith" pretense is gone and she refuses to give them anything.

14. LOTT and DEXEL'S suspect decision to terminate all of WILLIE JO MILLS' physicians who knew her history in favor of strangers who had little more credentials than Family Doctors or Sleep Disorder Doctors has proven time and time again to be a bad decision, as they place her on drugs that nearly kill her—with knowledge of prior almost fatal adverse reactions. LOTT and Physicians were advised at WILLIE JO MILLS' prior hospitalization that her mother could NOT TAKE STATINS AND OF THE 2011 BLOOD TRANSFUSIONS FROM COUMADIN. **Yet, Lott agreed to statin drugs despite WILLIE JO MILLS severe adverse reaction to them—leaving her crying in pain and begging for help. Notably, the family was not informed of this decision. SHERRY had to save the day again. SHERRY could tell by looking at her mother that Ginger had agreed to statins! Her mother was crying like a baby and could hardly speak or breathe, the pain in her muscles was so severe—alerting SHERRY to the obvious conclusion that she was on statins again. This is despite the near death experience she had in 2011 from them, when she had blood transfusions from adverse reactions to Coumadin**. *See Disturbing photos, video and emails about statin drugs with periodicals to*

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lawyers explaining dangers. Outrageously, Ginger accused SHERRY of coaching her mother to cry and threatened to revoke her visitation AGAIN in anger. This is not about GINGER LOTT! IT'S CONCERNS THE LIFE AND WELLFARE OF WILLIE JO MILLS.

POISONED RELATIONS PLACING MILLS AT RISK OF HARM

15. GINGER'S refusal to share information with the family and hostility up to this juncture, has placed MILLS in IRREPARABLE DANGER BECAUSE CAREGIVERS, NURSES, STAFF, AND LOTT REFUSE TO COMMUNICATE MILLS' MEDICAL INFORMATION TO HER DAUGHTERS. LOTT has harmed WILLIE JO MILLS repeatedly because LOTT is insufficiently versed regarding her medical history and clear drug reactions / intolerances, notwithstanding her absolute incompetence in dealing with complex health issues of the elderly. With research showing UTI's cause death in elderly paralyzed nursing home residents, LOTT acts lackadaisical about it—or acts that way to avoid looking bad for neglecting MILLS. *See all exhibits attached, which are true and correct copies of emails and periodicals from respected health journals.*

16. With PIERCE AND JOHNSTON'S superior, extensive knowledge of their mother's needs and health, LOTT should be encouraging open communication and allowing family to participate in care and decisions. Her failure to permit this may prove fatal and should have been known to be a risk by GINGER LOTT from the beginning. GINGER LOTT has become hostile to Pierce and Johnston and apparently incited caregivers of Hampton, sitters, and nurses to treat APPLICANTS AND SHERRY with contempt as well. Nicole and hospital nurses were overhead discussing when they had no way of knowing these things otherwise. Caregivers had the audacity to bad mouth MILLS' daughters in her

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presence. Yet, Ginger issues emails threatening Cindy and Sherry's visitation if they dare spoke about any aspect of her living arrangement in front of her. *Emails and films produced in hearing.* As advocates for a disabled person, they are protected from retaliation under anti-retaliation provisions of the Americans with Disabilities Act (ADA). APPLICANTS asked LOTT several times to please resign and allow them to be guardian of their mother. She refused. They could not in good conscience sit back and watch their mother die.

SWALLOW TEST

17. GINGER LOTT has been untruthful about many things—and seemingly about the swallow test she claims WILLIE JO MILLS failed—for which water and food have been withheld unless pureed, causing a 20 lb. weight loss and leaving her dangerously malnourished and dehydrated, no longer taking more than 5 bites of food and ounces of liquids per day with almost no urine output and no bowel movements for 4+ days. If SHERRY had not called 911, death was a virtual certainty. **WILLIE JO MILLS was becoming lethargic and could not be awakened, as very sick people starving to death become just prior to dying.** *See Photographs and videos.* Her photographs are so frightening, she has been deemed to look worse than bodies arriving at the morgue or crematory. This is very disturbing**. Especially since SHERRY JOHNSTON was told twice at hospitals that her mother has no swallowing problem—most recently at Methodist.**

18. **Johnston and Pierce have repeatedly asked for the swallow test results conducted by Ginger's provider for which this drastic measure was taken, but Ginger has refused to provide them since January. Now, she says it's against Louis Ditta's advice**

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to provide it until the case is over and settled. MILLS was tested at Methodist Hospital as to whether she could swallow and she passed, able to eat and drink water. During this same time, Sherry Johnston has been relentlessly accused falsely of placing her mother's health in danger of aspiration and pneumonia. Lott continued to mandate that only pureed and thickened foods or liquids be given MILLS, due to aspiration risk, which hardly makes sense given that under DEXEL, they were prepared to enforce a DNR. GINGER has at all times been MILLS' guardian since appointed and made these decisions on MILLS' behalf. It's inconceivably cruel and makes little sense to permit someone to starve to death in order to avoid responsibility for aspirating liquids and getting pneumonia.

WHAT IS LOTT HIDING?

19. WILLIE JO MILLS was sent via ambulance to Methodist on or about Sunday, April 20, 2014—after the ambulance SHERRY JOHNSTON called was told to leave just 30 minutes prior. On Friday, April 18, 2014, Schwager sending a barrage of emails and medical periodicals to the other lawyers, begging them to do something, describing the urgent crisis at hand. SHERRY spent over one week sending emails and/or texts to GINGER LOTT pointing out yeast infection, adverse reactions with statins, pain, crying, issues with inadequate fluids/food/urine/and other concerns—commencing in demands that her mother be taken to the hospital. GINGER LOTT waited to respond until Sunday. Doctors were shocked with WILLIE JO MILLS' CHART CUT, providing no information to them about her medications, food, fluids, urination, or bowel movements. This information was essential and was inexplicable cut out of her records, placing her life in

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danger! Reports have been made to the District Attorney, DADS, and Adult Protective Services, who were disturbed and began investigations into Hampton and Silverado.

20. MILLS suffers bedsores, the same warped, crooked, foot never treated by Lott (broken at Silverado). She is hardly EATING, HARDLY DRINKING, urinating only minimal amounts, and is so ill, she appears that she may die. She hardly talks or even sits up and her decline in the last 6 months is astounding. She's very sick and after months of promises to Cindy and Sherry for all records and complete transparency, she tells them after discovery periods have passed that counsel has advised against it until settlement and the case is over!

21. **Doctors at Methodist confirmed she had pus in her urine, a urinary tract infection, was dehydrated, malnutrition, and had keytones and nitrites in her urine, with about 20 lb. weight loss. Doctors noted that her muscles were breaking down; presumably with her body was eating them because she was in starvation mode.** HER SKIN IS THIN "SARAN WRAP" APPEARING COVERED WITH DARK SPOTTING AND TEARS. PIERCE AND JOHNSTON do not want their mother in the care of those who would destroy their mother records or neglect her to the point of death. Neither GINGER or personnel hired by her are trustworthy at this time.

22. This risk is elevated now because of the investigations and complaints lodged. CINDY PIERCE and BETTY JO LUCKEY request entry of the ATTACHED FIRST AMENDED SECOND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER ("TRO"). This Motion Orders GINGER LOTT to cease and desist contact with WILLIE JO MILLS, remaining at least 500 feet from her at all times, immediately resign or be removed, and conclude the guardianship with all required reporting on the condition of the

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ward immediately so that a successor can be named. APPLICANTS pray that CINDY PIERCE be named as successor guardian of WILLIE JO MILLS' person, even if temporarily until this case is decided. In support of this Emergency application for Temporary Guardianship, Applicant will present evidence, recordings, and photographs of Mrs. Mills to the Court. PIERCE alleges the following:

JURISDICTION & VENUE

23. Jurisdiction lies in the Harris County, Texas, Statutory Probate Court. The Harris County Statutory Probate Court has exclusive jurisdiction over guardianship WILLIE JO MILLS, as she is subject to a pending guardianship in Harris County and has at all times resided in Harris County, Texas since the guardianship began. Venue is appropriate in Harris County because the ward resides in Harris County, Texas with the Applicant at the time the Guardianship is being filed.

SUMMARY OF FACTS & RELIEF REQUESTED

24. Attached photographs and documents, as well as videos, are true and correct copies of taken of their mother, primarily since GINGER LOTT was appointed. *See attached series of photos and progression of illness*. Notably, the illnesses she suffers from are preventable, absent neglect. Malnutrition and dehydration as well as UTIs are preventable with appropriate care. A picture truly speaks a thousand words; revealing how very ill WILLIE JO MILLS is right now.

25. APPLICANTS plead for this relief because to the extent their mother can be saved, she will not be if left in LOTT AND HAMPTON ASSISTED LIVING'S CARE. SHE WAS ORDERED TO BE IN REHABILITATION FOR 20 DAYS AND IS FOR SOME REASON BEING MOVED PREMATURELY, THIS FRIDAY, MAY 2ND, 2014—BACK

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TO ASSISTED LIVING! APPLICANTS OBJECT TO MILLS BEING MOVED TO HAMPTON'S ASSISTED LIVING AT ALL, BUT CERTAINLY PRIOR TO 20 DAYS ORDERED BY METHODIST FOR FEAR WILLIE JO MILLS WILL DIE IMMINENTLY WITHOUT THIS TRO BEING GRANTED.

GROSS NEGLECT & RECKLESSNESS and CRUELTY

26. Since GINGER LOTT was appointed as MILLS' guardian, she has demonstrated neglect, reckless disregard, and possibly criminal behavior to the extent of her involvement in spoliation of records. She had at least two years under David Dexel as case manager to become acquainted with WILLIE JO MILLS' care needs and chooses to write things off as insignificant (UTI) or simply blame it on her age, when the illnesses MILLS has suffered are preventable with good care. Moreover, as DEXEL'S case manager, she attended to many of his duties—with respect to MILLS. While she may not be "legally liable" for acts occurring prior to her "official" appointment as guardian, the Court should take note of these things because she was equally, if not more, involved. Theses acts and omissions include:

a. October 2012 Hospitalization: Failing to ensure that Willie Jo Mills was hospitalized for pneumonia and a severe urinary tract infection in October of 2012:

b. Failing to ensure that proper patient-caregiver ratios were complied with in violation of patient care plans BOTH AT SILVERADO AND HAMPTON

c. Failing to do anything to help WILLIE JO MILLS regain her health throughout the fall of 2013, leaving responsibility on JOHNSTON AND PIERCE to do their jobs for them;

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d. Failing to promptly move MILLS when SILVERADO experienced a sharp decline in quality of care

e. Recklessly and Maliciously blocking JOHNSTON from all contact with her mother in retaliation for "rocking the boat" by asking too many questions, when JOHNSTON was providing substantive care not given to MILLS daily. This resulted in a sharp decline in MILLS' health, leaving her as ill as her daughters have ever seen until now;

f. Maliciously blocking the family from access to any and all information or records about their mother's dire health decline when open communication with the family could have avoided this nightmare and MILLS' risk of death, which appears imminent.

g. Recklessly failing to have MILLS treated by a Cardiologist or Pulmonologist up to now, when MILLS is a heart and lung patient who is in a dementia facility due to alleged stroke—EAFTER LOTT STATES A DR. RECOMMENDED IT SOME TIME AGO. See attached email.

h. Recklessly failing to ensure that MILLS leg and foot were properly set in a cast or stabilizing brace and Doctors' orders followed so that the brace remained in place 24 hours per day and not removed to allow her foot to dangle;

i. Recklessly permitting MILLS to acquire bed sores and doing nothing to get rid of the sores, such as purchasing a gel overlay mattress and/or air mattress through Medicare after these items were lost (rendering the products almost

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free). Rather than purchase appropriate bedding for MILLS, LOTT has permitted her to become progressively more ill due to bedsores, doing nothing.

j. Omitting to this Honorable Judge the very significant fact that WILLIE JO was treated in the E.R. for the black eyes and head laceration for which the December 4, 2014 TRO was filed and a hearing held.

k. Not ensuring that MILLS had sufficient fruit and vegetable intake to avoid malnutrition;

l. Allowing WILLIE JO MILLS to become so dehydrated, she hardly urinated

m. Recklessly placing her life in jeopardy with statins after a near death adverse reaction required blood transfusions in 2011—after being told of the risk and asked not to give WILLIE JO MILLS statins;

n. Failing to oversee her caregivers and having to fire Rae Lynn for neglect when Sherry told her information she has the duty to know but did not—Rae Lynn sat and watched football and neglected MILLS. LOTT could have seen this on the video camera she installed, so there's no excuse.

o. Recklessly allowing MILLS to lie in bed because the caregivers were too lazy to get her up, stating "if she doesn't want to get up, we aren't going to make her"—despite the obvious fact that she lacks capacity to make medical decisions on her own behalf.

p. Recklessly allowing MILLS to suffer malnutrition, keytones in her urine and muscle break down from starvation;

q. Failing to act with any urgency as MILLS weight plummeted and she stopped eating or taking sufficient fluids.

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r. Recklessly continuing the Exelon patch, which causes MILLS to act drugged, sluggish and not eat or drink sufficiently until the family became upset and demanded it stop;

s. Intentionally neglecting to look into persistent notifications that upon arrival of Cheryl (Nurse) or Johnston, MILLS was soaked in urine with evidence she had not been changed in many hours;

t. Violating multiple minimum standards of conduct repeatedly while serving as MILLS' guardian

u. Refusing to request a lift be purchased to help lift MILLS in and out of bed even after a staff member fell on her mother and knocked her down and she was dropped in a second incident for which she suffered black eyes with a laceration to the head;

v. Inciting hostility towards the family of WILLIE JO MILLS

w. Recklessly failing to prevent MILLS from acquiring bedsores by ensuring she was moved frequently and had appropriate bedding;

x. Intentionally and maliciously suppressing CRITICAL information, records, physician's statements, and denying the family all information leaving them and MILLS to suffer needlessly in fear and worry, unable to sleep or work

y. Punishing JOHNSTON out of nothing but retaliation which deprived her and MILLS' of months of precious time with one another, leaving MILLS depressed and in despair;

z. Continuing to purchase double diapering materials for MILLS after being notified these are illegal and cause bedsores

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TIMELINE OF LOTT'S NEGLECT 2012-12/2013

27. ***OCTOBER 2012***: Willie Jo Mills ("MILLS") contracted a urinary tract infection and pneumonia in October of 2012, mandating that she be hospitalized. Leslie Love, her nurse at Silverado, refused to take Willie Jo to the hospital **in favor of hospice** over the vehement objections of the family. MILLS was not terminal, rendering hospice inappropriate. MILLS developed the UTI and pneumonia from sitting in bed 20 hours per day in wet diapers that were found double wrapped (illegal). *LOTT did nothing while MILLS became sicker*, SHERRY JOHNSTON had to take her mother to the hospital and admit her. Doctors confirmed SHERRY JOHNSTON'S suspicions, that her mother had a UTI and pneumonia. Consistent with DEXEL and LOTT'S usual neglect, they did not visit or call to check on WILLIE JO MILLS the entire eight days she was hospitalized.

28. ***November – December of 2012:*** SHERRY JOHNSTON and/or CINDY PIERCE visited MILLS almost daily, bringing juices (fresh fruits and vegetables pureed) and other nutritional supplementation and **spoon fed her until MILLS regained her strength and WAS ABLE TO FEED HERSELF.** Her skin was so thin it tore before JOHNSTON began juicing her mom, but by the end of two weeks of juicing, color and health appeared to return. JOHNSTON would also nebulize her mom with the machine maintained by SILVERADO. This was permitted by SILVERADO to the extent that SILVERADO personnel actually gave MILLS the juice and provided the nebulizer. **No complaint or restriction on these practices was ever issued until JOHNSTON began uncovering instances of severe neglect concerning her**

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mother's care—at which time she would face visitation bans to keep her from learning more.

29. ***March – April of 2013:*** JOHNSTON AND PIERCE were largely responsible for their mother's progress as she regained her health post-hospitalization, but by March/April of 2013 JOHNSTON AND PIERCE simply could not stomach the gross neglect of their mother routinely experienced at SILVERADO CARE FACILITY. They were also upset that MILLS was billed more than $7000.00 per month for substandard care that was the rule, not the exception, leaving them to continuously supplement their mother's care with things neglected

30. ***On the heels of complaints to DEXEL, which escalated into an argument in which JOHNSTON warned she would file a grievance against his license, JOHNSTON is banned from visitation by DEXEL TO RETALIATE ILLEGALLY.***

31. ***MAY 17, 2013.*** Sherry Johnston was banned from visiting each time she complained about her mother's care or took a photo to document the neglect.

32. ***May 2013 – present:*** DAVID DEXEL AND GINGER LOTT appreciated SHERRY JOHNSTON being their eyes and ears on the ground and doing their work the past three years so long as their interests were not adverse. LOTT and SILVERADO began acting to protect them from liability, rather than care for MILLS and became the impediment to her obtaining appropriate care, the situation became intolerable.

33. ***JUNE OF 2013*** – Inadequate staffing was the cause of Mrs. Mills falling from her wheelchair in JUNE of 2013, **breaking her foot, as well as the bedsores she currently suffers.** MILLS was supposed to have a caregiver present, she was left by the television and fell asleep, slouching over in her wheelchair as she fell to the

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floor, twisting and breaking her leg. No precautions were in place to prevent this from happening despite the fact that MILLS has been wheelchair bound since her 2007 stroke. The foot was never set or placed in a cast, only a leg brace. LOTT did not even bother to obtain the doctors' order, which said that the brace placed on her leg was not to be removed 24/7. She apparently told caregivers that the brace could be taken off at night when the Doctors' orders prohibited this. JOHNSTON'S diligence once again ensured this did not happen.

34. 2013: AS soon as SILVERADO'S outrageous neglect of Mrs. Mills surfaced and DEXEL'S liability became clear, LOTT, SILVERADO, AND DEXEL instituted various procedures designed to prevent the family from seeing what's really going on, including but not limited to:

a. Visitation bans on Sherry, who visited daily and routinely discovered her mother lying in urine or feces, with a UTI, pneumonia, unchanged or unfed by caregivers

b. Refusing to share medical records or permit family members to attend on doctors' appointments with doctors chosen exclusively by Dexel, Lott and Silverado

c. Using physicians to care for Willie Jo that were not independent, but rather, employees of the corporation, Silverado

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d. Sudden bans on Sherry from taking photos of her mother (or kicking her out of the facility for doing so) when they had never objected to her taking photographs in the past.[1]

e. Bans on Sherry talking to other residents and/or their families, with whom she had been friends for several years (many of which were instituted by the families, not Sherry).

f. Refusing to permit Johnston or Pierce to remove Willie Jo without three days prior notice;

g. Assigning a "sitter" whose function seemed more to watch the family's visits with their mother than care for Willie Jo, particularly given that the sitter was not permitted to leave the room while they were present;

h. Misrepresentations and evasiveness regarding the status of Willie Jo's health and/or care;

35. SEPTEMBER 29, 2013: JOHNSTON writes to inquire about side effects of the Exelon patch given to the ward, stating urgent concerns that MILLS is having adverse reactions to it, including weight loss, sleeping non-stop, and general decline in health all over due to remaining in bed and not having the energy to take in sufficient food and water by herself, no response.

36. DECEMBER 2013: GINGER LOTT HAS RARELY ACTED in WILLIE JO MILLS' best interest, but rather, to cover up their own neglect which has resulted in her becoming extremely ill. Willie Jo Mills is dehydrated, not eating, weak, and on

[1] In fact, it was not until Dexel, Lott and Silverado became concerned about their legal liability that the family hit such a brick wall getting information about their mother's care;

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the decline fast. She was very depressed, weak and hardly alive. MILLS' health has taken a nose dive and she is in dire need of her daughters' care, since LOTT and others have demonstrated a blasé attitude and/or lukewarm concern.

TEMPORARY RESTRAINING ORDER

37. For this reason, CINDY PIERCE seeks this First Amended Second Emergency Temporary Restraining Order, restraining GINGER LOTT from the acts listed and commanding LOTT to perform the tasks ordered below:

a. GINGER LOTT IS HEREBY ORDERED TO IMMEDIATELY:

i. Submit her final report on the Condition of the Ward and Resignation Application, but no later than 3 days

ii. In the event she fails to submit her resignation and reporting by the date ordered, she is hereby removed under Section 1203.051 of the Texas Estates Code immediately for abuse and/or neglect;

iii. Cease and desist from contacting WILLIE JO MILLS, remaining more than 500 feet away from Mrs. Mills at all times

iv. Cease and desist from attempting to control or direct WILLIE JO MILLS' medical care and notify all Doctors, caregivers, sitters, and Hampton of her resignation, including instructions that CINDY PIERCE will succeed her with all rights;

v. Submit all required information for the Court to immediately replace her with CINDY PIERCE, AS SUCCESSOR GUARDIAN

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vi. CEASE AND DESIST from all further acts which could even be construed as retaliation against SHERRY JOHNSTON, CINDY PIERCE, WILLIE JO MILLS, OR BETTY JO LUCKEY;

vii. Cease and desist from taking any action or making any statements to anyone which are derogatory about SHERRY JOHNSTON, CINDY PIERCE WILLIE JO MILLS, OR BETTY JO LUCKEY

viii. Cease and desist from any attempts to block SHERRY JOHNSTON'S visitation with MILLS or any specified reason;

ix. Cease and desist from the destruction or spoliation of evidence concerning this case;

x. Provide all medical records and releases pertaining to WILLIE JO MILLS to CINDY PIERCE no later than five calendar days;

xi. Cease and desist from withholding information about WILLIE JO MILLS when asked by this Court, Doctors, medical providers, Hampton, or her family;

xii. Cease and desist from Violating any of the standards of minimum conduct for certified guardians;

xiii. Cease and desist from Falsifying information concerning any persons in this case, whether parties, the ward or employees/independent contractors

xiv. Cease and desist from Speaking to JOHNSTON AND/OR PIERCE in anything less than a professional, cordial manner as a partner in care would do

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xv. Cease and desist from Conspiring with anyone regarding matters in this case;

xvi. Cease and desist from sharing information concerning JOHNSTON AND PIERCE with management or personnel of Hampton that would tend to make HAMPTON personnel view either daughter in a negative light.

ARGUMENT & AUTHORITIES

38. Texas law provides for a restraining order to be issued where there is proof of imminent, irreparable injury that cannot be compensated for at law, or in damages. TEX. R. CIV. P. 681. RULE 681 provides, "No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown byor by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon." Notice was provided prior to the hearing.

39. The risk of death or serious illness could hardly be more imminent, irreparable and critical to justify the granting of a TRO. One can hardly imagine more dire circumstances of immediate, irreparable injury than finding your mother severely ill to the point of not taking in sufficient food and water, suffering malnutrition, dehydration, severe urinary tract infection from an infected catheter, unable to sit up she's so weak, tearing skin from not having sufficient nutrition, bedsores from utter neglect, a deformed, twisted foot caused by neglect after multiple incidents where incompetent aides dropped the paralyzed woman—on the verge of death. Clearly,

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there is no adequate remedy at law because there's no guarantee she will survive even until trial, much less recover.

40. APPLICANT pleads with this Court to take swift, certain action and to grant their requested TRO, included herein to protect WILLIE JO MILLS from imminent danger of death by GINGER LOTT'S gross neglect, reckless disregard, and improper motives. GINGER LOTT'S malicious retaliatory acts designed to cover her utter neglect and recklessness have created a very dangerous situation, which is made all the more dangerous by virtue of the fact that LOTT is in damage control mode—rather than truly being concerned about the ward's best interest as mandated.

INJURY TO AN ELDERLY OR DISABLED PERSON

41. APPLICANTS point to this provision due to their belief that this has occurred as a result of evidence referred to in this TRO Application and to underscore the seriousness of the situation MILLS finds herself. While APPLICANTS may ultimately not be able to obtain the evidence and/or the District Attorney may decline further action, it is nonetheless a crime to **cause injury to an elderly or disabled person intentionally, knowingly, recklessly, or with criminal negligence.** Section 22.04 reads:§ 22.04. INJURY TO ELDERLY OR DISABLED INDIVIDUAL.

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual: (1) serious bodily injury; (2)

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5/6/2016 3:15:40 PM

serious mental deficiency, impairment, or injury; or (3) bodily injury.

(b) (A-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility: (1) serious bodily injury; (2) serious mental deficiency, impairment, or injury; (3) bodily injury;

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42. Section 260A of the Heath and Safety Code defines abuse and neglect in facilities such as Hampton and Silverado:

(1) "Abuse" means:

(A) The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident;

"Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

05/22/2015 15:42:20 2002529

43. With the complete devastation of injuries repeatedly inflicted upon WILLIE JO MILLS under GINGER LOTT and these facilities she chose, liability seems obvious and reports have been made to DADS, the District Attorney and Adult Protective Services—an investigation has begun. The report was taken very seriously. It is clearly time for her to resign or be removed. A complaint is being forwarded to the Guardianship Certification Board as well. APPLICANTS can no longer sit back and watch their mother die. This is not the course they ever wanted and asked LOTT to resign many times.

RESIGNATION OF GINGER LOTT

44. GINGER LOTT can either voluntarily resign or this Judge certainly has the discretion to ORDER her to do so if she hopes to avoid removal. APPLICANTS simply want GINGER LOTT out, whether she resigns or is removed.

45. Sec. 1203.001. A guardian of the estate or guardian of the person who wishes to resign the guardian's trust shall file a written application with the court clerk, accompanied by (2) in the case of a guardian of the person, a verified report containing the information required in the annual report required under Subchapter C, Chapter 1163, showing the condition of the ward entrusted to the guardian's care. Sec. 1203.002. States: (a) If the necessity exists, the court may immediately accept the resignation of a guardian and appoint a successor guardian as provided by Section 1203.102(b). The primary requirement is the submission of a report concerning the condition of the ward. APPLICANT believes this could be accomplished in mere days with sufficient motivation.

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5/25/2016 3:45:52 PM Chris Daniel - District Clerk Harris County

46. If LOTT refuses to resign, the Court has ample evidence to satisfy Section 1203.051 to remove her immediately without even providing notice. Sec. 1203.051. (a) The court, on the court's own motion or on the motion of an interested person, including the ward, and without notice, may remove a guardian appointed under this title who:(B) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section;

CONCLUSION & PRAYER

47. Applicants, CINDY PIERCE and BETTY JO LUCKEY, pray that this honorable Judge would grant this FIRST AMENDED SECOND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER ("TRO") based upon the imminent threat of severe harm (death) to WILLIE JO MILLS, incapacitated, whether the Court determines in its discretion to ORDER GINGER LOTT To resign or REMOVE HER for cause under Section 1203.051 of the Texas Estates Code. GINGER LOTT has proven time and time again her incompetence, laziness, gross neglect, and recklessness, render her a threat to WILLIE JO MILLS of harm which is both imminent and irreparable for which no adequate remedy at law exists. APPLICANTS further pray that CINDY PIERCE OR BETY JO IS APPOINTED, EVEN IF ONLY ON A TEMPORARY BASIS, PENDING CONCLUSION OF THIS CASE. WE FURTHER BELIEVE SHE MUST BE MOVED FROM HAMPTON IMMEDIATELY OR CAN BE ALMOST GUARANTEED OF DYING. APPLICANT prays for all other and

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05/20/2016 15:42:24 Page 5

UNOFFICIAL COPY

further relief to which she is justly entitled at law or in equity and specifically for the relief included herein.

Respectfully submitted,

/S/ William r. Hester, Jr.
William R Hester, Jr.
363 North Sam Houston Parkway
Suite 100/115
Houston, Texas 77060
SBN 09554200
Tel: 281.586.7999
Fax: 281.586.7997
Whester1969@gmail.com
LEAD ATTORNEY FOR CINDY PIERCE, BETTY JO LUCKEY

/S/ Candice L Schwager
SCHWAGER LAW FIRM
1417 RAMADA DR
HOUSTON, TEXAS 77062
TEL: 832.315.8489
FAX: 832.514.4738
schwagerlawfirm@live.com
ASSOCIATE COUNSEL FOR CINDY PIERCE & BETTY JO LUCKEY

CERTIFICATE OF SERVICE

I, CANDICE L SCHWAGER, hereby certify that a true and correct copy of this FIRST AMENDED SECOND APPLICATION FOR TRO and supporting evidence was served on all counsel of record on this 29th day of APRIIL, with videos previously sent.

/S/ Candice L Schwager

05/22/2014 15:42:00.032

On Friday, March 28, 2014 10:52 AM, sherry johnston <sjohnst007@yahoo.com> wrote:

Ginger, yesterday I was visiting mother and noticed that the help is not getting mom out of bed. The help tells me that mother does not want to get up and they are not going to get her up. The mucus is building up in mom lungs because she is not moving or being transported out of the bed. She also has a moderate rash (Yeast maybe) Spreading on her buttocks. I believe that she is getting a yeast growth resulting from the multiple antibiotics or the statin drugs she is now taking. Mother has a severe problem making blood while taking blood thinners in the past. As you should know in 2011 mother was given multiple units of blood and blood thinners were discontinued. You arranged for sitters at the hospital while the children could go to work or rest while someone was with mom. Mom muscles are deteriorating and mom is complaining that her legs are hurting (cramping)., What would be the purpose of putting mother on Statin drugs which side effects are Congestive Heart Failure, memory loss,muscle deterioration etc, and blood thinners that causes skin tares which mother constantly battles?

Choose life-your mom did!
Sherry Johnston

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05022014 1342 p0036

Please correct facts

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/16/14 8:10 PM
To: problaw@aol.com; Louis M. Ditta (louditta@cenatiempo.com); Bill Hester (whester1969@gmail.com); Jason Ostrom (jason@ostromsain.com); Clarinda Comstock (ccomstock@mlbcc.com)

You state that Sherry and Cindy we're reimbursed from Mills' estate when you should recall that only Larry's fees to Jason we're paid. Larry agreed for Cindy to be guardian if they or the estate paid his fees, which they flat out refused, stating they would not be seeking the $40,000 they spent to freeze the accounts and stop Larry. I'm very disappointed that you intentionally bury your head in the sand re Larry's long history of nothing short of theft. You brush it under the rug and join the others to maintain your territory with no regard for the rights of anyone. Your only argument is well, judge, they don't get along. Tell me, where in the code or law does it say you can violate your own clients rights and the family members who have devoted decades of time by her side simply because of one greedy brother who's only desire is to cause pain to his siblings? Where is this family conflict clause? There isn't one.

There is 2008 POA designating Cindy
Ample evidence based on 17 years she wants Cindy
Evidence that she has cheated death a few times by the inexperience and incompetence or neglect of Dexel and Ginger

Please provide a date where we can depose Mills at Hampton. We will keep it short, asking what she wants

You came into this case presumptuous and should be sanctioned for continuing to ignore Judge Butts' rulings on waiver and jury trial.

Your client was never even asked if she wanted a jury trial. She does. She wants to testify bc her protectors won't advocate for her desires at all.

Family conflict is nonsense see birthday party where all 3 are there smiling with mom. Larry chose to despise sherry two decades ago. She's tried to reach him. He's the problem. This is wrong. It seems everyone but me and Judge Butts has confusion as to their duties under Bar Rules. But I promise that each person will be held accountable if you derail Mills' case for your own benefit.

I would much prefer to have positive relations and let the chips fall where they may knowing we did our best and win or lose, the games was fair. I would prefer you all know me for the passionate advocate I am, but my first duty is to my client and to observe the ethical constraints binding me while I give truth to the judge respecting the Constitution and law.

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

0502201424150:2d0d34

Fw: Request for medical records

From: **sherry johnston** (sjohnst007@yahoo.com)
Sent: Tue 4/15/14 7:09 PM
To: Candice Schwager (schwagerlawfirm@live.com)
1 attachment
medical request.pdf (203.8 KB)

Choose life-your mom did!
Sherry Johnston

On Sunday, March 23, 2014 11:18 PM, sherry johnston <sjohnst007@yahoo.com> wrote:

> *Choose life-your mom did!*
> *Sherry Johnston*
>
> On Thursday, January 23, 2014 2:35 PM, "Johnston, Sherry" <SJohnston@eprod.com> wrote:
>
> > Please complete and sign so I can get a copy of mothers' medical records from the Methodist Hospital
> > Thanks for your quick response
> >
> > Choose Life -Your Mom Did
> > Sherry Johnston
> >
> > **From:** Ginger Lott <gingers.lott@yahoo.com>;
> > **To:** Denise Harrison <DHarrison@brookdaleliving.com>; sherry johnston <sjohnst007@yahoo.com>;
> > **Subject:** Meeting Willie Jo Mills
> > **Sent:** Fri, Dec 27, 2013 6:36:05 PM
> >
> > Here is what I ascertained from the meeting on December 24, 2013:

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05/22/2015 13:22:25 5713025

can put thickner in it for the right consistency. All unused homemade juice have to be removed from the facility. Sherry is going to buy Naked Juice that is sealed and leave in the refrigerator. Hampton has a policy that no unsealed food can be left.

2. Family can bring food but it has to be pureed to the right consistency, if she brings her own blender then it can be cleaned at the Hampton. The blender needs to be put up after every use.

3. All care for Mrs. Mills will be done by the facility and the sitter, changing, bathing, transfers etc. No family member will assist.

4. A swallowing test will be scheduled and Family can attend to see how it is done and ask questions. At this time Mrs. Mills is on a pureed diet.

5. There will be a drop cam placed in the room to avoid any misinterpretations.

6. Family is going to select a bed that she would like for her mother to have and I will submit to the Trust for payment.

7. Sherry is going to put a phone apparatus.

8. Medical information can be given to the family.

9. If there appears to be a problem with staff at the Hampton, doctors and home health care, the problem will be directed to me and I will handle it, to avoid any misrepresentations.

10. Sherry visitations have been reinstated.

If I have left out anything let me know.

Best regards,

Ginger S. Lott
TxCG G-13-0409
GSL Care Management, LLC
17434 Red Oak Dr., Suite D
Houston, TX 77090
281-444-1552
281-444-1541 (fax)

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immediately and delete this message.

05022015-1342-0035

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05/22/2015 13:42:40.057

Fw: Willie Jo Mills

From: **sherry johnston** (sjohnst007@yahoo.com)
Sent: Tue 4/15/14 6:59 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Choose life-your mom did!
Sherry Johnston

On , sherry johnston <sjohnst007@yahoo.com> wrote:

> *Choose life-your mom did!*
> *Sherry Johnston*
>
> On Thursday, April 3, 2014 9:49 PM, sherry johnston <sjohnst007@yahoo.com> wrote:
>
> > I appreciate you listening to our complaints and stopping this horrible drug.
> >
> > ---
> >
> > **From:** Ginger Lott <gingers.lott@yahoo.com>;
> > **To:** retiredmanlife@yahoo.com <retiredmanlife@yahoo.com>; sherry johnston <sjohnst007@yahoo.com>; TheJock68@aol.com <TheJock68@aol.com>;
> > **Subject:** Willie Jo Mills
> > **Sent:** Thu, Apr 3, 2014 6:01:22 PM
> >
> > The statin drugs have been discontinued from your Mother's med list.
> >
> > With that said, I need you to understand when a question or statement is made regarding your mothers care or her medication, that I rely on information from the doctors, the facility, the sitter and other workers at the facility, like the physical therapy. When your mother complains of pain, she will state what ever is suggested to her.
> >
> > Your mother has been changed to a honey thickness liquid due

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I have also been informed that your mother appears anxious when the contested matter is discussed with her, please refrain from discussing this matter with her and do not discuss her being moved, this really upsets her.

I want all her children to visit and enjoy your mother and her to enjoy your visits, without drama. I do not want to have to stop visits, but I will if Willie Jo appears stressed by these matters.

Best regards,

Ginger S. Lott
TxCG G-13-0409
GSL Care Management, LLC
17434 Red Oak Dr., Suite D
Houston, TX 77090
281-444-1552
281-444-1541 (fax)

UNOFFICIAL COPY

05022015 12:42:P0059

Mothers health

From: **sherry johnston** (sjohnst007@yahoo.com)
Sent: Sat 4/12/14 6:00 AM
To: Ginger Lott (gingers.lott@yahoo.com); Bill Hester (whester1969@gmail.com); Candice Schwager (schwagerlawfirm@live.com); Cindy Pierce (retiredmanlife@hotmail.com); Betty Jo Luckey (candcmetalfab@sbcglobal.net)

I was at the Hampton visiting mother yesterday and saw that she has a Cather. I have been trying to tell you that the direction you are taking with mothers health is not working. She is getting sicker and sicker. At this point she will not get any better if she does not eat or drink. The food; she does not like and apparently the water is not pleasant to her causing her health to decline. If she doesn't eat or drink the next step would be a feeding tube or let her die by starvation. Wouldn't it make more sense to try and get her to drink thicken juices that she likes and try to build her up either brought from home or made at the Hampton. If you are trying to prevent mother from chocking (Aspirating) and she ends up starving and dehydrated what have you accomplished but making her last days extremely miserable and tortured. I believe it would be better trying anything to build up mom and she dies in the process (we gave it our best shot to keep her going) than killing her with dangerous medicine and the terrible side effects. It would be in mothers best interest to let her children take care of her in her last days. You can move on and have other income with other guardianship's. Is your Pride worth killing my mother?

Choose life-your mom did!
Sherry Johnston

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EXHIBIT 2 - 5/22/15 - 9:47 - 2015-0045

Deposition dates 2nd request

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Sun 4/20/14 10:36 PM
To: Louis M. Ditta (louditta@cenatiempo.com); Clarinda Comstock (ccomstock@mlbcc.com); Bill Hester (whester1969@gmail.com)

Please provide deposition dates for Ginger and you, clarinda. Discovery rules prohibit ambush. If I don't receive by tomorrow I will notice without your input.

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

Statin Therapy: An Expert Interview With Eliot A. Brinton, MD

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Sat 4/19/14 2:01 PM
To: Louis M. Ditta (louditta@cenatiempo.com); Bill Hester (whester1969@gmail.com)

She cried and could hardly speak, breathless, Muscle pain!
She had antibiotics with them!! Big no
Maybe she's not urinating bc kidney damage this causes. Note elderly women highest risk

http://www.medscape.org/viewarticle/481357

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

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05/22/2014 15:44:20.042

Statin side effects, danger, natural alternatives

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Sat 4/19/14 1:56 PM
To: Clarinda Comstock (ccomstock@mlbcc.com); Louis M. Ditta (louditta@cenatiempo.com); Jason Ostrom (jason@ostromsain.com); problaw@aol.com; Bill Hester (whester1969@gmail.com)
Bcc: Sherry Johnston (sjohnst007@yahoo.com)

Wille Jo needs to go to ER and have. Liver function test, kidney assessment and IV for dehydration among other treatment. Statins can cause a stroke..wow, smart
http://www.raysahelian.com/statins.html

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

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05022015 15:42:20045

Fw: Willie Jo Mills

From: **sherry johnston** (sjohnst007@yahoo.com)
Sent: Tue 4/15/14 6:59 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Choose life-your mom did!
Sherry Johnston

On , sherry johnston <sjohnst007@yahoo.com> wrote:

> ***Choose life-your mom did!***
> ***Sherry Johnston***
>
> On Thursday, April 3, 2014 9:49 PM, sherry johnston <sjohnst007@yahoo.com> wrote:
>
> > I appreciate you listening to our complaints and stopping this horrible drug.
> >
> > ---
> >
> > **From:** Ginger Lott <gingers.lott@yahoo.com>;
> > **To:** retiredmanlife@yahoo.com <retiredmanlife@yahoo.com>; sherry johnston <sjohnst007@yahoo.com>; TheJock68@aol.com <TheJock68@aol.com>;
> > **Subject:** Willie Jo Mills
> > **Sent:** Thu, Apr 3, 2014 6:01:22 PM
> >
> > The statin drugs have been discontinued from your Mother's med list.
> >
> > With that said, I need you to understand when a question or statement is made regarding your mothers care or her medication, that I rely on information from the doctors, the facility, the sitter and other workers at the facility, like the physical therapy. When your mother complains of pain, she will state what ever is suggested to her.
> >
> > Your mother has been changed to a honey thickness liquid due

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I have also been informed that your mother appears anxious when the contested matter is discussed with her, please refrain from discussing this matter with her and do not discuss her being moved, this really upsets her.

I want all her children to visit and enjoy your mother and her to enjoy your visits, without drama. I do not want to have to stop visits, but I will if Willie Jo appears stressed by these matters.

Best regards,

Ginger S. Lott
TxCG G-13-0409
GSL Care Management, LLC
17434 Red Oak Dr., Suite D
Houston, TX 77090
281-444-1552
281-444-1541 (fax)

UNOFFICIAL COPY

05/22/2014 13:42:20.045

Fwd: Mother's leg cramps

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Sun 3/30/14 1:38 PM
To: Louis M. Ditta (louditta@cenatiempo.com)
Cc: Bill Hester (whester1969@gmail.com)

Mr Ditta,

You should be aware of the severe died effects Mrs Mills is experiencing since Ginger and the Drs decision to give her statin drugs, which nearly killed her in 2011. She has not slept in days and screams out in pain due to leg cramps and magnesium deficiency. Something needs to be done now. She should not have to suffer like this. Please take action immediately. Also, while I know you don't employ the belligerent staff at The Hampton, certainly your thousands poured in there each month give you a soapbox upon which to make demands. I request that you speak to personnel and stop the harassing belligerent conduct towards my clients now.

http://www.mayoclinic.org/diseases-conditions/high-blood-cholesterol/in-depth/statin-side-effects/art-20046013

Why is it that one moment Ginger either ignores Mrs Mills and advocates for DNR and the next, she's putting her on dangerous "preventative " drugs? You see a conflict here?

Thank you for looking into this. Mrs Mills is in pain and not well. And the last thing this family needs or deserves is a bunch of back talking women with bad attitudes in their face

Regards,

Candice Leonard Schwager
The Schwager Law Firm
Tel: 832.315.8489
Fax: 832.514.4738
Schwagerlawfirm@live.com
http://www.schwagerlawfirm.com

Begin forwarded message:

From: sherry johnston <sjohnst007@yahoo.com>
Date: March 30, 2014 at 11:55:37 AM CDT
To: Ginger Lott <gingers.lott@yahoo.com>, William Hestler <whester1969@gmail.com>, Candice Schwager <schwagerlawfirm@live.com>, Cindy Pierce <retiredmanlife@hotmail.com>, Betty Jo Luckey <candcmetalfab@sbcglobal.net>
Subject: Mother's leg cramps

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05022014:1342:P0046

I went by yesterday to spend some time with mom and during lunch mom had a couple of severe leg cramps. The cramps were so severe that it took moms breath and she was crying and could not say anything but "HELP" and her voice was in such despair. She had another severe leg cramp around 2 pm and she is telling me and Andrea that her legs are camping unbearable. I also tried to spend some time with mother in the courtyard area to enjoy the sunshine and now I have to get permission from you to take mother outside inside the courtyard. Again I want to bring to your attention that mother has adverse reaction to statin and blood thinning drugs. She has severe leg cramps, constipation, mental confusion, weight loss and no energy on statin drugs and severe blood blisters on arms and legs which are already started with blood thinners . Her skin is becoming paper thin and will lead to severe bruising and blood transfusions. This the the third repeat of this treatment that ends up putting mom back into the hospital to correct the side effects. (blood transfusions).

Is This treatment of mom benefits her health at this age? Mom is 86 and spends almost all her time in a very limited space (her room and a app 30x75 common area to eat and watch more TV with no extra activity). This is not making mothers life in peaceful. More hospital stays from laying in bed creating bed sores and more congestion to create pneumonia. Being isolated just adds to her depression from being away from her family and friends. You can never replace my, Betty Jo and Cindy's love and concerns (best interest) with sitters, caregivers, institutional living,doctors, lawyers and private professional guardians!

Choose life-your mom did!
Sherry Johnston

UNOFFICIAL COPY

05220 : 1242 : 50017

On Friday, March 28, 2014 10:52 AM, sherry johnston <sjohnst007@yahoo.com> wrote:

Ginger, yesterday I was visiting mother and noticed that the help is not getting mom out of bed. The help tells me that mother does not want to get up and they are not going to get her up. The mucus is building up in mom lungs because she is not moving or being transported out of the bed. She also has a moderate rash (Yeast maybe) Spreading on her buttocks. I believe that she is getting a yeast growth resulting from the multiple antibiotics or the statin drugs she is now taking. Mother has a severe problem making blood while taking blood thinners in the past. As you should know in 2011 mother was given multiple units of blood and blood thinners were discontinued. You arranged for sitters at the hospital while the children could go to work or rest while someone was with mom. Mom muscles are deteriorating and mom is complaining that her legs are hurting (cramping)., What would be the purpose of putting mother on Statin drugs which side effects are Congestive Heart Failure, memory loss,muscle deterioration etc, and blood thinners that causes skin tares which mother constantly battles?

Choose life-your mom did!
Sherry Johnston

UNOFFICIAL COPY

05/22/2014 04:42:50 PM

Re: DROP CAM

From: **Ginger Lott** (gingers.lott@yahoo.com)
Sent: Thu 1/23/14 9:00 AM
To: Denise Harrison (DHarrison@brookdaleliving.com); Johnston, Sherry (sjohnston@eprod.com); schwagerlawfirm@live.com (schwagerlawfirm@live.com); sjohnst007@yahoo.com (sjohnst007@yahoo.com); retiredmanlife@hotmail.com (retiredmanlife@hotmail.com)
Cc: Leisha Zatezalo (lzatezalo@brookdaleliving.com)

Sherry, I have already contracted with ADT for the installation and monitoring a camera for Ms. Mills room, it should be installed next week.

Best regards,

Ginger S. Lott
TxCG G-13-0409
GSL Care Management, LLC
17434 Red Oak Dr., Suite D
Houston, TX 77090
281-444-1552
281-444-1541 (fax)

On Wednesday, January 22, 2014 4:45 PM, Denise Harrison <DHarrison@brookdaleliving.com> wrote:
There needs to be a sign posted stating that video surveillance is in progress.

From: Johnston, Sherry [mailto:SJohnston@eprod.com]
Sent: Wednesday, January 22, 2014 4:14 PM
To: Denise Harrison; 'Ginger Lott (gingers.lott@yahoo.com)'; schwagerlawfirm@live.com; sjohnst007@yahoo.com; retiredmanlife@hotmail.com
Subject: DROP CAM

Mothers Dropcam had to be reordered. It was damaged during shipping. Please let me know what type of notice needs to be posted outside mothers room.

Choose Life Your Mom Did
Sherry Johnston

This message (including any attachments) is confidential and intended for a specific individual and purpose. If you are not the intended recipient, please notify the sender immediately and delete this message.

UNOFFICIAL COPY

Case 4:16-cv-03215 Document 10-17 Filed in TXSD on 12/19/16 Page 48 of 95

Fwd: Deposition

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:46 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 17, 2014 at 12:39:36 PM CDT
To: Clarinda Comstock <ccomstock@mlbcc.com>, Bill Hester <whester1969@gmail.com>
Subject: Deposition

We would like to depose you. Please give 3 dates.

Regards

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

05/20/2014:15:52:00050

Fwd: URGENT!

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:45 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 18, 2014 at 11:06:27 PM CDT
To: "Louis M. Ditta" <louditta@cenatiempo.com>, Jason Ostrom <jason@ostromsain.com>, Clarinda Comstock <ccomstock@mlbcc.com>, problaw@aol.com
Cc: Bill Hester <whester1969@gmail.com>, Sherrie Fox <sherrie.fox@prob.hctx.net>
Subject: URGENT!

Counsel,

Mrs Mills has been on a frightening decline for at least 2 weeks if not more. She is no longer eating, going to the bathroom either via urinating or bowel movement. She drinks only the tiny portion of thickened liquids ordered. Sherry tried to awaken her for 5 hours today to try to get her to eat. Sherry managed to get 5 bites in before she refused. She lays in bed all day. It's odd that drs won't permit patients to lay in bed even after major abdominal surgery..forcing them to get up and walk whether they like it or not, recognizing there is no alternative if they want to avoid death. Yet, your "caretaker" refuse to even try to awaken her. When it's convenient her incapacity is thrown in our face, but when they are lazy or simply uneducated or no agenda is at work, she is left in bed with clueless women stating "if she don't want to get up, we aren't going to make her." I thought she was incompetent to make medical decisions for herself?

Then why does she get to lay in bed and get progressively more ill because she doesn't want to get up? Is she drugged? She appears very drugged. What's your plan or rather, excuse? This is why you should not be involved in making decisions for her. You're not even aware of her suffering or are able to ignore it, "out of sight, out of mind" or you would be admitting her to the ER right now. Sorry to burden your weekend with attending to Willie Jo, but she needs to go to the hospital Now! Please, place your ego aside and take care of her! She is going to die in a matter of time if you do get up and take care of Willie Jo. Cindy and Sherry

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I doubt you want to regret it later.

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

5:16-cv-03215 Document 10-17 Filed in TXSD on 12/19/16 Page 51 of 95

Fwd: Yeast infection

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:45 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: sherry johnston <sjohnst007@yahoo.com>
Date: April 19, 2014 at 3:39:19 PM CDT
To: Candice Schwager <schwagerlawfirm@live.com>
Subject: Fw: Yeast infection
Reply-To: sherry johnston <sjohnst007@yahoo.com>

Choose life-your mom did!
Sherry Johnston

On Tuesday, April 15, 2014 9:06 PM, sherry johnston <sjohnst007@yahoo.com> wrote:

> *Choose life-your mom did!*
> *Sherry Johnston*
>
> On Friday, March 28, 2014 10:52 AM, sherry johnston <sjohnst007@yahoo.com> wrote:
>
> > Ginger, yesterday I was visiting mother and noticed that the help is not getting mom out of bed. The help tells me that mother does not want to get up and they are not going to get her up. The mucus is building up in mom lungs

UNOFFICIAL COPY

5/20/2015 4:45:22 PM

because she is not moving or being transported out of the bed. She also has a moderate rash (Yeast maybe) Spreading on her buttocks. I believe that she is getting a yeast growth resulting from the multiple antibiotics or the statin drugs she is now taking. Mother has a severe problem making blood while taking blood thinners in the past. As you should know in 2011 mother was given multiple units of blood and blood thinners were discontinued. You arranged for sitters at the hospital while the children could go to work or rest while someone was with mom. Mom muscles are deteriorating and mom is complaining that her legs are hurting (cramping)., What would be the purpose of putting mother on Statin drugs which side effects are Congestive Heart Failure, memory loss,muscle deterioration etc, and blood thinners that causes skin tares which mother constantly battles?

Choose life-your mom did!
Sherry Johnston

UNOFFICIAL COPY

05/02/2014 13:42:20.054

Fwd: Statin Therapy: An Expert Interview With Eliot A. Brinton, MD

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:44 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

UNOFFICIAL COPY

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 19, 2014 at 4:01:45 PM CDT
To: "Louis M. Ditta" <louditta@cenatiempo.com>, Bill Hester <whester1969@gmail.com>
Subject: Statin Therapy: An Expert Interview With Eliot A. Brinton, MD

She cried and could hardly speak, breathless, Muscle pain!
She had antibiotics with them!! Big no
Maybe she's not urinating bc kidney damage this causes. Note elderly women highest risk

http://www.medscape.org/viewarticle/481357

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

5/22/2014 1:52:42 PM

Fwd: Death by Medicine By Gary Null

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:43 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 19, 2014 at 4:58:33 PM CDT
To: Sherry Johnston <sjohnst007@yahoo.com>, tommy luckey <candcmetalfab@sbcglobal.net>, problaw@aol.com, Jason Ostrom <jason@ostromsain.com>, "Louis M. Ditta" <louditta@cenatiempo.com>, darrell pierce <retiredmanlife@hotmail.com>, Clarinda Comstock <ccomstock@mlbcc.com>, Bill Hester <whester1969@gmail.com>
Subject: Death by Medicine By Gary Null

Malnutrition dehydration and death to avoid being sued for choking? Makes sense. Starving someone to death is cruel.

http://www.whale.to/a/null9.html#MALNUTRITION_IN_NURSING_HOMES_

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

05/22/2014 04:42:PM 056

Fwd: Keeping on top of mothers health

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:42 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: sherry johnston <sjohnst007@yahoo.com>
Date: April 19, 2014 at 3:42:30 PM CDT
To: Candice Schwager <schwagerlawfirm@live.com>
Subject: Fw: Keeping on top of mothers health
Reply-To: sherry johnston <sjohnst007@yahoo.com>

Choose life-your mom did!
Sherry Johnston

On , sherry johnston <sjohnst007@yahoo.com> wrote:

> *Choose life-your mom did!*
> *Sherry Johnston*
>
> On Tuesday, April 15, 2014 9:07 PM, sherry johnston <sjohnst007@yahoo.com> wrote:
>
> > *Choose life-your mom did!*
> > *Sherry Johnston*

UNOFFICIAL COPY

05022015-152225-00057

Sent this to Ginger and wanted everyone to be watching for statin drugs side-effects. My concern is that the doctor needs to be on top of this! Thanks

This is from Web MD website

Are There Side Effects of Statin Drugs?

Most people who take statin drugs tolerate them very well. But some people experience side effects.

The most common statin side effects include:

- Headache
- Difficulty sleeping
- Flushing of the skin
- Muscle aches, tenderness, or weakness (myalgia)
- Drowsiness
- Dizziness
- Nausea and/or vomiting
- Abdominal cramping and/or pain
- Bloating and/or gas
- Diarrhea
- Constipation
- Rash

Statins also carry warnings that memory loss, mental confusion, high blood sugar, and type 2 diabetes are possible side effects. It's important to remember that statins may also interact with other medications you take.

Which Statin Side Effects Are Serious?

Statins are associated with a few rare, but potentially serious, side effects including:

- **Myositis**, inflammation of the muscles. The risk of muscle injury increases when certain other medications are taken with statin use. For example, if you take a combination of a statin and a fibrate -- another cholesterol-reducing drug -- the risk of muscle damage increases greatly compared to someone who takes a statin alone.
- **Elevated levels of CPK**, or creatine kinase, a muscle enzyme that when elevated, can cause muscle pain, mild inflammation, and muscle weakness. This condition, though uncommon, can take a long time to resolve.
- **Rhabdomyolysis**, extreme muscle inflammation and damage. With this condition, muscles all over the body become painful and weak. The severely damaged muscles release proteins into the blood that collect in the kidneys. The kidneys can become damaged trying to eliminate a large amount of muscle breakdown caused by statin use. This can ultimately lead to kidney failure or even death. Fortunately, rhabdomyolysis is extremely rare. It occurs in less than one in 10,000 people taking statins.

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05220147:242:00058

Choose life-your mom did!
Sherry Johnston

On Sunday, March 23, 2014 11:13 PM, sherry johnston <sjohnst007@yahoo.com> wrote:

> I wanted to bring you up to date on mom since you are not sharing medical malformation. You may already know that mother is having muscle cramps in her legs and not able to sleep for the last 2 nights. The Doctors have increased her High Blood pressure medicine including blood thinners. Are we chasing our tails with mothers health. Now she has more blood thinners, high blood pressure meds and statin drugs. This is exactly what is going on with mom in the video
>
> http://www.youtube.com/watch?v=sxWP3Q2M-Pw&feature=youtu.be
> http://www.youtube.com/watch?v=19uxXqWF8h4

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05/22/2014 15:42:50:59

UNOFFICIAL COPY

05022014:1942:P0060

Fwd: Mrs Mills!

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:42 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 20, 2014 at 3:14:33 PM CDT
To: "Louis M. Ditta" <louditta@cenatiempo.com>, Jason Ostrom <jason@ostromsain.com>, problaw@aol.com, Bill Hester <whester1969@gmail.com>, Clarinda Comstock <ccomstock@mlbcc.com>
Subject: Mrs Mills!

Willie Jo has pus in her urine, bedsores, not drinking but mere ml of water, not hardly urinating, it's dark with pus in her catheter bag. She's hardly speaking. Is the plan to wait until she becomes septic?

Sherry is concerned so she text Ginger to call her or she would call 911 in 30 min. Ginger never responded. (Counsel's advice?) 911 was called and Hampton would not hardly allow them to even examine her. They made them leave. Notably, Sherry never told them take her anywhere. She just wanted them to examine her, but Hampton is more interested in covering up.

Nurses are hiding information. Do something now please.

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

6/23/2014 5:42:52 PM

Fwd: Deposition dates 2nd request

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:42 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 21, 2014 at 12:36:01 AM CDT
To: "Louis M. Ditta" <louditta@cenatiempo.com>, Clarinda Comstock <ccomstock@mlbcc.com>, Bill Hester <whester1969@gmail.com>
Subject: Deposition dates 2nd request

Please provide deposition dates for Ginger and you, clarinda. Discovery rules prohibit ambush. If I don't receive by tomorrow I will notice without your input.

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

UNOFFICIAL COPY

05022014:1342:00062

Fwd: DISCOVERY

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:41 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 21, 2014 at 3:11:18 AM CDT
To: "louditta@cenatiempo.com" <louditta@cenatiempo.com>, "jason@ostromsain.com" <jason@ostromsain.com>, "ccomstock@mlbcc.com" <ccomstock@mlbcc.com>, Bill Hester <whester1969@gmail.com>, "problaw@aol.com" <problaw@aol.com>
Cc: Sherry Johnston <sjohnst007@yahoo.com>, "retiredmanlife@hotmail.com" <retiredmanlife@hotmail.com>, "candcmetalfab@sbcglobal.net" <candcmetalfab@sbcglobal.net>
Subject: DISCOVERY

Given the number of emails which we have in which Ginger promised to provide medical records Sherry and Cindy asked for months ago and Clarinda's misrepresentation that you have made these freely available to use, I will agree to withdraw other discovery to ginger if you produce the documents. Otherwise, I will ask the Judge for an extension of the discovery period and require you to answer all of it and be deposed (witnessed I have asked thus far). I think it's a bad idea in a case like this for anyone to be hiding information and standing behind technicalities to CYA. Given the serious nature of Mrs. Mills' health and the serious problems Ginger may face if things are as we believe, I highly recommend absolute transparency. One way or another, it will be discovered. I think good faith is the only means by which anyone can hope to resolve this matter to anyone's satisfaction. Obviously, we disagree as to the outcome, but if the process is hindered by lies and misrepresentations, it's going to be much worse. I do not believe the Judge is going to appreciate this lack of candor, nor I do believe it is acceptable under the minimum standards. If we are all here for the best interests of Willie Jo and Ginger has done a great job, what is there to hide?

We don't want a continuance. Mrs. Mills is too sick and may die before we get to trial if you persist.

UNOFFICIAL COPY

Candice

UNOFFICIAL COPY

05/22/2014 1:34:2 P0054

Fwd: DISCOVERY

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:41 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 21, 2014 at 3:22:39 AM CDT
To: "louditta@cenatiempo.com" <louditta@cenatiempo.com>, "jason@ostromsain.com" <jason@ostromsain.com>, "ccomstock@mlbcc.com" <ccomstock@mlbcc.com>, Bill Hester <whester1969@gmail.com>, "problaw@aol.com" <problaw@aol.com>
Cc: Sherry Johnston <sjohnst007@yahoo.com>, "retiredmanlife@hotmail.com" <retiredmanlife@hotmail.com>, "candcmetalfab@sbcglobal.net" <candcmetalfab@sbcglobal.net>
Subject: RE: DISCOVERY

We specifically want the records Hampton "Cut" out of Mrs Mills' charts before sending her to the hospital as does the Methodist Dr. I think that's illegal, spoliation. Those records concern her intake and output and I can see why they want them hidden from view, but they need to be produced. The Judge will hear about this.

From: schwagerlawfirm@live.com
To: louditta@cenatiempo.com; jason@ostromsain.com; ccomstock@mlbcc.com; whester1969@gmail.com; problaw@aol.com
CC: sjohnst007@yahoo.com; retiredmanlife@hotmail.com; candcmetalfab@sbcglobal.net
Subject: DISCOVERY
Date: Mon, 21 Apr 2014 01:11:18 -0700

Given the number of emails which we have in which Ginger promised to provide medical records Sherry and Cindy asked for months ago and Clarinda's misrepresentation that you have made these freely available to use, I will agree to withdraw other discovery to ginger if you produce the documents. Otherwise, I will ask the Judge for an extension of the discovery period and require you to answer all of it and be deposed (witnessed I have asked thus far). I

technicalities to CYA. Given the serious nature of Mrs. Mills' health and the serious problems Ginger may face if things are as we believe, I highly recommend absolute transparency. One way or another, it will be discovered. I think good faith is the only means by which anyone can hope to resolve this matter to anyone's satisfaction. Obviously, we disagree as to the outcome, but if the process is hindered by lies and misrepresentations, it's going to be much worse. I do not believe the Judge is going to appreciate this lack of candor, nor I do believe it is acceptable under the minimum standards. If we are all here for the best interests of Willie Jo and Ginger has done a great job, what is there to hide?

We don't want a continuance. Mrs. Mills is too sick and may die before we get to trial if you persist.

Please respond,

Candice

05/22/2015 3:42:26 PM 5905

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Text

Fwd: Statin side effects, danger, natural alternatives

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:45 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: Candice Schwager <schwagerlawfirm@live.com>
Date: April 19, 2014 at 3:56:05 PM CDT
To: Clarinda Comstock <ccomstock@mlbcc.com>, "Louis M. Ditta" <louditta@cenatiempo.com>, Jason Ostrom <jason@ostromsain.com>, problaw@aol.com, Bill Hester <whester1969@gmail.com>
Subject: Statin side effects, danger, natural alternatives

Wille Jo needs to go to ER and have. Liver function test, kidney assessment and IV for dehydration among other treatment. Statins can cause a stroke..wow, smart
http://www.raysahelian.com/statins.html

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

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05/22/14 13:32:21 p.007

Fwd: Hospice

From: **Candice Schwager** (schwagerlawfirm@live.com)
Sent: Wed 4/23/14 7:35 PM
To: Candice Schwager (schwagerlawfirm@live.com)

Candice Schwager
SCHWAGER LAW FIRM
Schwagerlawfirm@live.com
Tel: 832.315.8489
Fax: 832.514.4738

Begin forwarded message:

From: sherry johnston <sjohnst007@yahoo.com>
Date: April 22, 2014 at 11:20:09 AM CDT
To: Candice Schwager <schwagerlawfirm@live.com>, Bill Hester <whester1969@gmail.com>, Tommy Luckey <candcmetalfab@sbcglobal.net>, Ginger Lott <gingers.lott@yahoo.com>, Cindy Pierce <retiredmanlife@yahoo.com>, Clarinda Comstock <ccomstock@mlbcc.com>, "problaw@aol.com" <problaw@aol.com>
Subject: Fw: Hospice
Reply-To: sherry johnston <sjohnst007@yahoo.com>

Choose life-your mom did!
Sherry Johnston

On Sunday, March 23, 2014 6:43 PM, Candice Schwager <schwagerlawfirm@live.com> wrote:

> Discovery will obtain will send this week
>
> Candice Schwager
> SCHWAGER LAW FIRM
> T: 832.315.8489
> F: 832.514.4738
> Http//www.elderlawatty.com
> Schwagerlawfirm@live.com
>
> On Mar 23, 2014, at 2:24 PM, gingers.lott@yahoo.com wrote:

UNOFFICIAL COPY

0502205 04:52:12 04/02/2014

I have been advised by counsel not to release medical records until everything is settled. I will contact Patient care givers and get a replacement on Rayleen. I agree with you it should be all about your mother. With respect to the breathing treatment they are as needed. Again I would never place your mother on hospice without a family. Meeting with medical personal. I never forget she is yalls mother
Sent from my Verizon Wireless BlackBerry

From: sherry johnston <sjohnst007@yahoo.com>
Date: Sun, 23 Mar 2014 09:45:19 -0700 (PDT)
To: Ginger Lott<gingers.lott@yahoo.com>; Candice Schwager<schwagerlawfirm@live.com>; Cindy Pierce<retiredmanlife@hotmail.com>
ReplyTo: sherry johnston <sjohnst007@yahoo.com>
Subject: Hospice

Since mother is back from the hospital, She is not receiving any breathing treatments. What is going on. You simply ignore the family request to be informed about our mother. I went to see mom Friday and Raylene (the sitter) was in the commons area with mom when I arrived. I gave mom a big kiss and asked if she was thirsty and she said yes. I was giving her a drink when she wanted to turn the television program off sports and wanted to watch a movie. I said okay and was looking for the remote and Raylene said that if mom wanted to watch a movie, she could go to her room and watch her own TV. That she is going to watch sports here. Raylene is being paid by mother to help accommodate her needs and wants. I thought she was very rude to mom and her attitude is unacceptable. She sits and watches sports all day and texting her friends while totally ignoring mom. I have commented to you several times. I wish to file a complaint with you and Patients Care Givers on behalf of mom. Mom has no freedoms to do anything she wants and now she has to sit in a room while She is

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mother on Hospice

Choose life-your mom did!
Sherry Johnston

0502201410:24:1909

UNOFFICIAL COPY

05022014 1:42:12pm 0070

WILLIE JO MILLS (2012 – 2014)

Ginger Lott's Care

A. Statin Drugs Crying



B. Statin Drugs Crying



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Document ID: 0.7.1942.42201-000050

C. Asleep

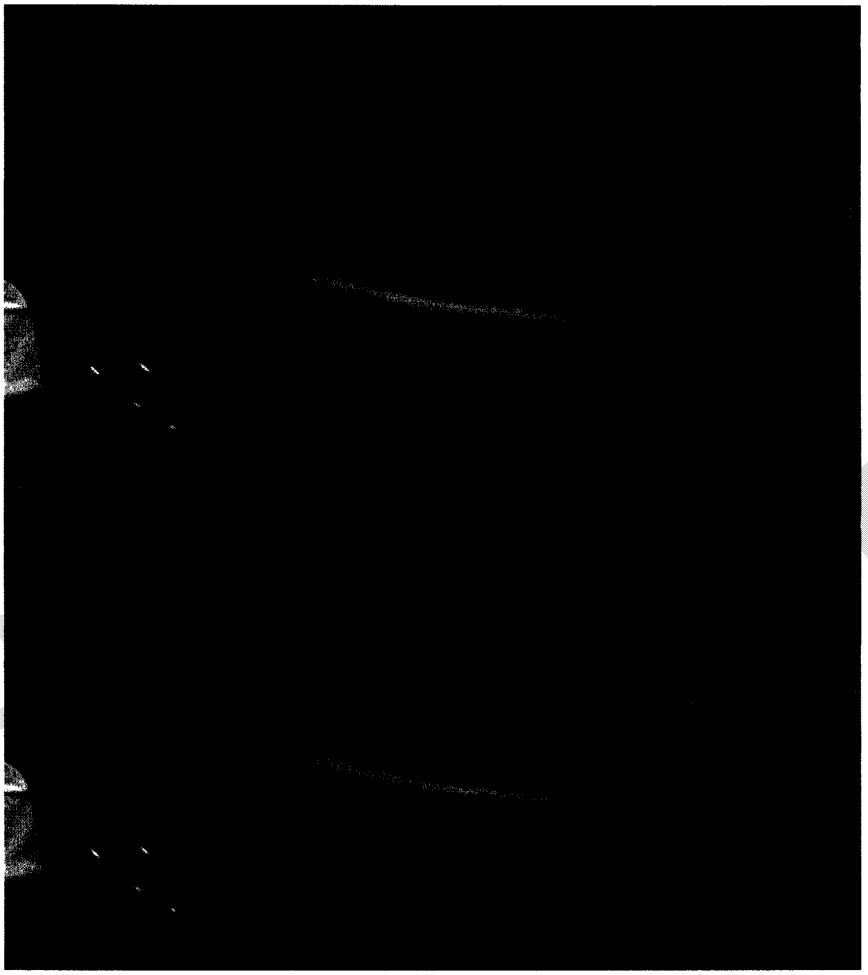


D. Sleeping



05/22/2014 15:32:21 1022015

E. Pus in Catheter tub



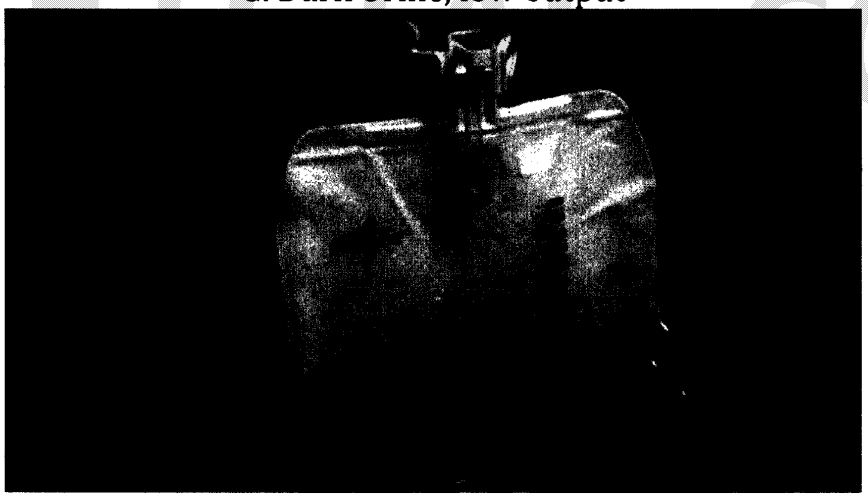
UNOFFICIAL COPY

5502201 15:12:20073

F. wake up mom



G. Dark Urine, low output



UNOFFICIAL COPY

05022014 1342 P0074

H. Bedsores



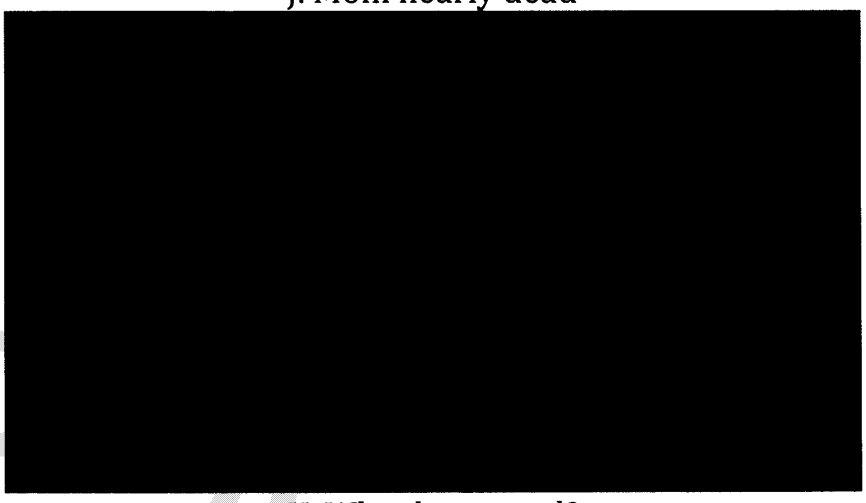
I. Mom's Thin Skin Malnutrition



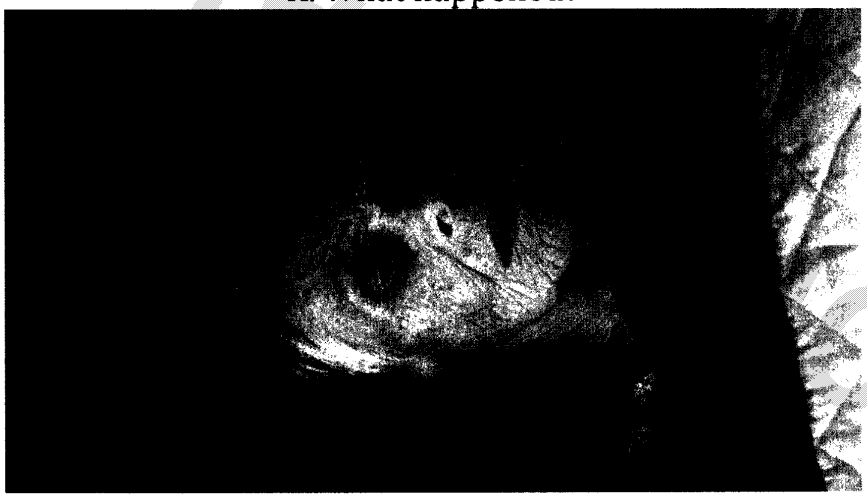
UNOFFICIAL COPY

05/22/17 13:42:20.75

J. Mom nearly dead



K. What happened?



05/02/2014 13:42:20.076

L. Mom Legs



M. Methodist Papers



5/22/2013 12:15:10 PM 2013-027

N. Mom



UNOFFICIAL COPY

05/22/2014 15:42 [10078

NOV. 27 2012 – Christmas 2013



Sherry Johnston had been providing fresh vegetable and fruit juices made at home
To Willie Jo, who seemed to recover her skin tone and color, able to eat again

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

05220 : 2012 : 50079

NOVEMBER 27, 2012 BIRTHDAY



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05022014:1342:00080

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

VALENTINES DAY 2012 – SHERRY JUICING MOM HEAVILY



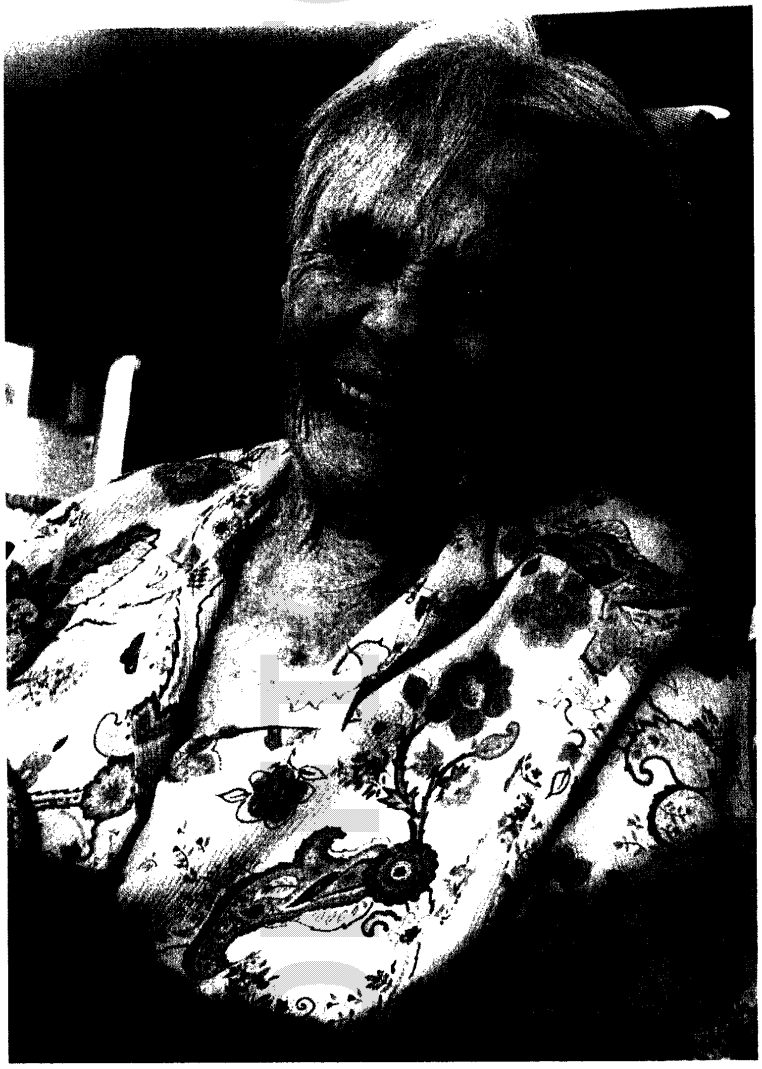
UNOFFICIAL COPY

05022014:1342:P0081

UNOFFICIAL COPY

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

SPRING 2013 SHERRY JUICING MOM HEAVILY



05/22/14: 5:42: DOSS

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 20, 2013
DOUBLE DIAPER ILLEGAL AT HAMPTON



UNOFFICIAL COPY

05/22/2014 13:42 PAGE

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 13,2013 WILLIE JO BROKEN LEG/FOOT HAMPTON

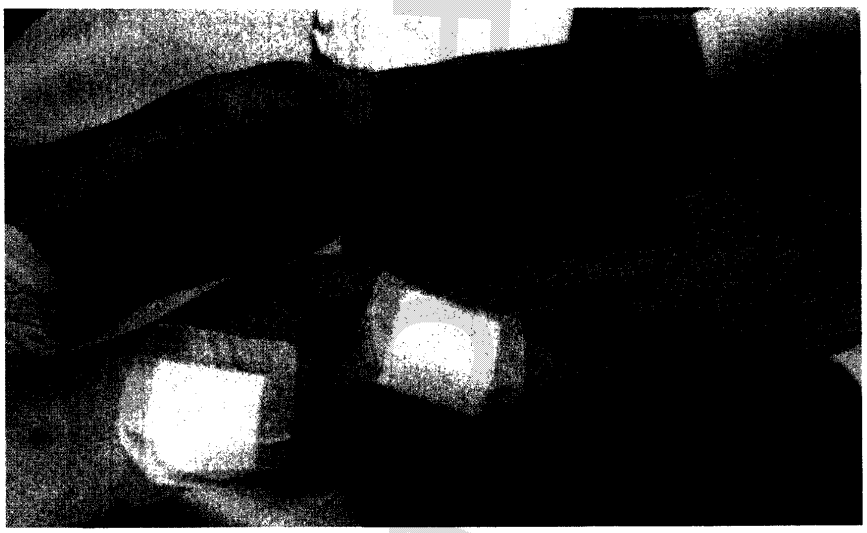


COPY UNOFFICIAL

05022014:1342:P0084

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 23, 2013 SKIN TEARS AND BRUISING WITH PATCHES NOT DATED (ILLEGAL)



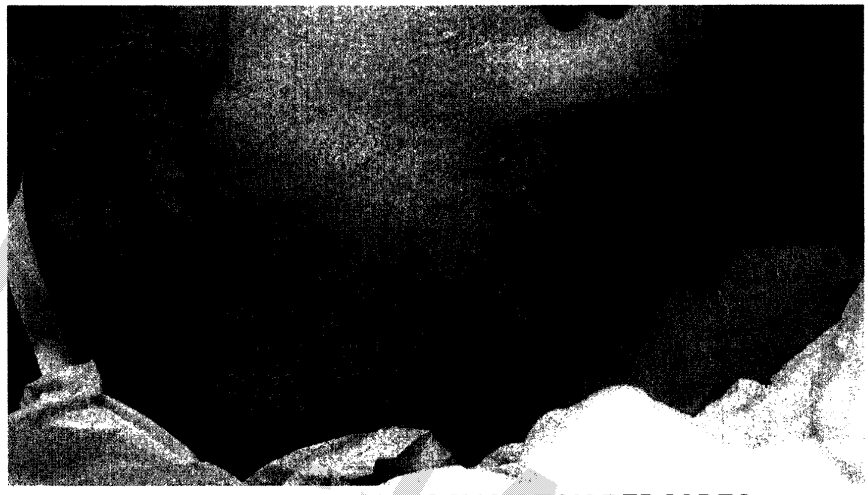


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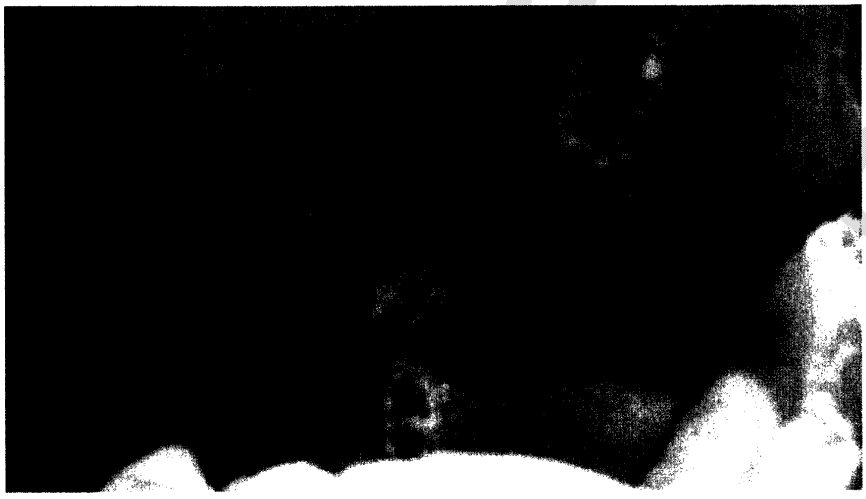
05/22/2014 13:42 PAGE

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

NOVEMBER 2013 HAMPTON BEDSORES



NOVEMBER 2013 HAMPTON BEDSORES



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WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

DECEMBER 4, 2013 POST-HOSPITALIZATION



SICK,DEPRESSED, NOT EATING, SEDATED, HAMPTON

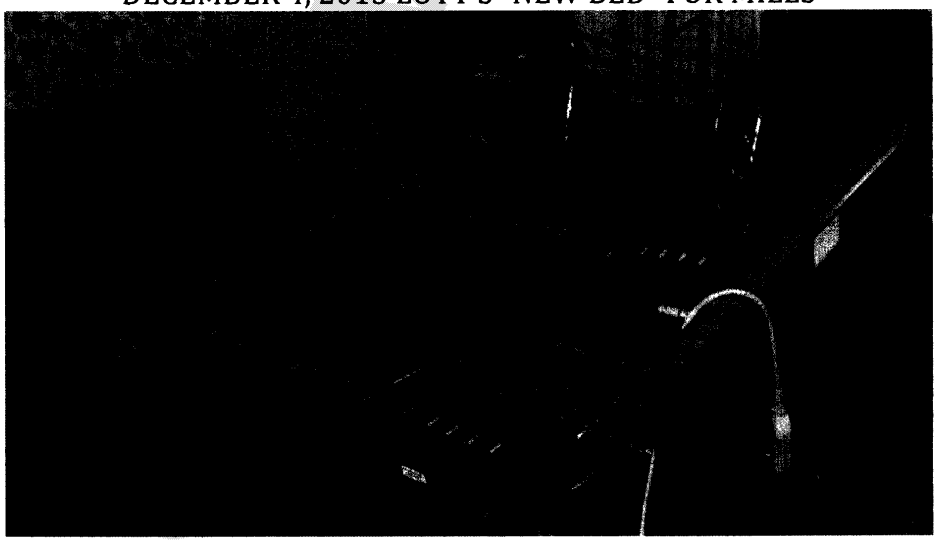
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WILLIE JO MILLS (2012 – PRESENT) – exhibit 2
DECEMBER 4, 2013



DECEMBER 4, 2013 LOTT'S "NEW BED" FOR MILLS



05/22/2014 13:42:20068

CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §
COUNTY OF HARRIS §

On the 23 day of April 2014, SHERRY JOHNSTON appeared before me and testified under oath as follows:

"My name is SHERRY JOHNSTON. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this AFFIDAVIT. I have read the SECOND TEMPORARY RESTRAINING ORDER FILED BY CINDY SUE PIERCE AGAINST GINGER SUE LOTT AND OUR LETTER TO HONORABLE JUDGE BUTTS, ATTACHED HERETO. All statements made concerning me or otherwise therein are true and correct based upon my personal knowledge. Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SIGNED BEFORE ME THIS 23th DAY OF ~~FEBRUARY~~ April 2014.

NOTARY PUBLIC STATE OF TEXAS
Noemi Perez
My Commission Expires
02/26/2017

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

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SHERRY LYNN JOHNSTON
April 23, 2014

The Honorable Judge Christine Butts:

We, SHERRY LYNN JOHNSTON, CINDY SUE PIERCE, AND BETTY JO LUCKEY, come before you and plead for your intervention to save our mom/grandmother from further harm and imminent death by the neglect and suspicious behavior of her "protectors". We do not ask this lightly nor would we make accusations of this sort likely. We firmly believe that WILLIE JO MILLS, incapacitated, is in danger of imminent harm and gross neglect which is substantially certain to end in death if you do not intervene.

We have contacted the District Attorney and expect charges will be filed before their investigation is over. What began as a case of Ginger Lott simply not being qualified to handle our Mother/Grandmother's care has become a frightening cover up to avoid being held accountable for her mistakes. We also believe other individuals involved are either sloppy or do not care enough to know the truth—including Howard Reiner and Clarinda Comstock. The system has failed our family, harmed our mother, and abused us for doing little more than complaining.

Everything changed in 2012 when my mother's health took a turn for the worse and concern for liability rather than my mother's best interest—has been paramount since. I have had to fight for her to receive care at the risk of being slandered and defamed—even before this Court. I was punished for complaining, letting others know my concerns, and demanding my mother receive urgent attention to her critical medical needs. She is soft spoken and unable to speak up for her needs. She's also scared to do so, so she does not complain. As her daughter, it is my duty to be her voice. This is all I have ever done and those who say otherwise are lying.

Mom is totally 100% dependent on the guardian and care givers to feed, clean, put her to bed, and also to be able to speak up for her. Mom keeps getting sick because the care givers are not trained to deal with mother's issues and because their incompetence and lack of knowledge of my mom's medical history results in them consenting to bad decisions by doctors who don't know my mother. Ginger and David changed every doctor she had when they took over, eliminating anyone who knew her history. This was a bad decision and suspect as well.

I am tired of having to watch my mother's back and ensure people like Ginger are not harming her. Ginger has a camera in my mom's room so there's no excuse for her to not know that Rae Lynn sat around watching sports and neglecting to even give my mom water while she was there. But again, I have to report to Ginger what she should know. I objected to this company in the first place and time and time again, I am proven right. Ginger fired her for neglecting my mom and watching TV. Ginger has threated us against talking about any issues in front of my mother—which we do not do anyway. Yet, her caregiver, Nicole was taped talking trash about my sister and I in front of my mother,

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accusing us of wrong motives and causing trouble. It's clear that Ginger has instigated caretakers and nurses at hospitals to treat us bad because we have overhead them talking about us with information they would never know absent Ginger's disclosure. I heard two nurses bad mouthing my sister and I the last time my mother was hospitalized. This has caused Hampton personnel to be hostile and nasty to us and there's no excuse for this. It falls beyond the standards to which Ginger is held as a guardian.

Ginger has no particular skills, training or experience that qualify her to be my mother's guardian. There is not room for "on the job training" at the cost of my mother's life. Ginger does not know my mother—even after serving as David's case manager—because she's never really cared enough to be "excellent." She has never gone the extra mile as we always do with our mom.

Ginger is grossly negligent and cruel in causing my mother to suffer to soothe her bruised ego. After seeing the photos of my mom in tears and reading the medical periodicals we sent on statin drugs, she met with Dr's and they were removed. I thanked her and her response was to threaten me again. She is more concerned with looking bad than she is about my mother's wellbeing. My mom is very sick and Ginger wrote an email mocking me again, stating that my mother only had a UTI and was would be released, as if I was overreacting. It now is clear that I was not and she was grossly neglecting WILLIE JO MILLS. The Doctors at Methodist diagnosed her with dehydration, malnutrition, urinary tract infection, said she does not seem to have any problems swallowing, and ordered that she go into rehabilitation with skilled nursing for 20 days.

Ginger has become so threatened by her own neglect that she refuses to even talk to us, delays responding to urgent texts and emails, lies about my mother's health—telling me that she did not have pus in her catheter when I have photos of it and she sent a note to the Dr at Methodist telling him she had pus in her catheter. Hampton cut out of chart all of the information about my mother's medications, food, water, intake, urination, bowel movements daily log—critical for the Doctor to see. He was shocked and pointed out to me that they cut it from her chart. This places her life in danger to cover up their neglect and liability and is cruel and grossly negligent—to the point of intentional torts.

She promised medical records and now says counsel has advised against it until after the case is settled, when they will be of no value. This Court should not trust her because she lies by omission to this Honorable Judge, ad evidenced by the fact that neither her lawyer nor Ginger mentioned that they had taken my mother to the Emergency Room when she was dropped and suffered black eyes on or about December 4, 2013—the day before we appeared for the TRO hearing. This is beyond unacceptable and cruel—showing she is not concerned for my mother, but herself. The caregiver Rae Lynn said that the care givers dropped mom and they did not know how to handle mom. Ginger never admitted to this but blamed my mother for falling. How does a paralyzed woman who can't even pick up a drink fall out of bed? She was dropped.

Ginger has kept us constantly in fear and on edge that she has my mom on hospice and to my shock, a caregiver had a conversation with the sitter in front of my mom, asking if she

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was on hospice recently. My mother took note and was shocked and scared. Ginger tries to make us look unreasonable for asking, but fails to disclose her deceitful activities that make us suspect it in the first place. It has created chaos for which I am usually punished. It's insane that she has created the chaos by vindictiveness and lies and yet each time I want to know what's wrong with my mom, I am banned.

Clarinda Comstock's report is full of mischaracterizations that mock me rather than report truth. She distorts my objection to one drug—the Exelon Patch—with a blanket statement that I am in denial of my mother's incapacity and don't want medical care. That is a lie. I don't want drugs that are harming my mother with bad side effects. The Exelon patch causes nausea and vomiting, muscle spasms, delusions and falls in the elderly. Studies report it has not even been proven to be effective. I object to harmful drugs that have no benefit to my mother. WILLIE JO MILLS seems to have an extreme sensitivity to drugs—as evidenced by her prior adverse reactions. Given her history, I believe a conservative (not reckless) approach is best. But I believe in Doctors or I would not have called the ambulance to take my mother to Methodist last week. She has suffered an overdose to Vicodin and Coumadin reaction, requiring emergency blood transfusions since she has been under guardianship care.

My sister and I have been involved in nursing home care and personally witnessed the death of several people we love, giving us ample understanding of the needs of the elderly and the significance of things like urinary tract infections to those who are paralyzed. I endured the painful experience of watching my mother in law die under very similar circumstances—with no power to intervene and stop it. As soon as an elderly person ceases to eat regular food, drink sufficient fluids, get out of bed, and develops infections like UTIs, death is not far away. This is what happened to my mother in law. The nursing home stopped feeding her, giving her sufficient fluids, she became dehydrated, malnourished, developed infection---which led to sepsis, and we could not get her to wake up—and she died.

I have endured the horror of this same scenario with my beloved mother since 2012 under Lott and Dexel's "care". Prior to that time, my mother's needs were always met because we were at her side day in and day out and reported what needed to be done to David Dexel. Before he became threatened, he just did what we asked and things were never perfect, but I committed to make up for what was not being done for my mother by being there every day and ensuring she was changed, juiced, had nutrition, and enjoyed her life, not left in bed.

Cindy and I have been very close to my mother since childhood, but since my father's death, we have spent 2-3 days per week with her when able. She lived with me for 7 months while her house was being built in 1996 and for about a year in 2007 rotating with my sister and moms' sister. Like a child, I know everything about my mother. I can tell what is wrong without having to ask. She has suffered repeated UTI's and pneumonia, so I know what to look for before it gets to a critical point. Yet, every time I try to simply tell Ginger or a nurse/caretaker that I believe my mother needs attention, I am ignored or worse—threatened.

Exhibit Copy

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Cindy and I have spent 40 years being with mom since we have been grown and know when something is going wrong with mom. When old people get sick with UTI's , they start off with itching and later it turns into having a really hard time urinating and if you are not paying really close attention it will progress into fever, chills, and as the elderly becomes septic, they get to where they cannot hear you, get symptoms of Dementia, and finally they become to the point that they want to sleep all the time, stop talking and then the next thing that happens they stop eating, drinking and finally death in a matter of a few days. WE have seen this happen many times in the past and this is happening to mom more than once in the past year-half. It happen with mom under David Dexel care and wanted to put her on Hospice in late 2012 and is happening again now as we speak with mom this week. Cindy and I asked Ginger to get involved into mother health and to no avail she totally ignores us. We asked Ginger to take mother to the hospital April 18th, 2014 after weeks of explaining the symptoms to Ginger and she totally ignored us.

Recently, my mother was crying in tears of pain and reaching for her legs and I knew Ginger had agreed to place her on statin drugs without even asking. Ginger has refused to tell us what she is doing and it's very dangerous for my mother because she has almost died of adverse drug reactions several times. In 2008, under Larry's POA, she overdosed on Vicodin and had severe reaction to CIPRO. She also had a violent reaction to Coumadin and required blood transfusions to survive in 2011. Prior to guardianship, my mother only took vitamins, not all of these drugs. Clarinda mocks me and distorts my statements in this regard. I believe in medical care, but I am conservative about drugs given my mother's intolerance of them and near death experiences. I am very healthy and credit my good health to common sense nutrition.

And again she states that her attorney advised her not to share any medical information with us. We pleaded with her to listen to us and all she said is we are making up stories and coaching mom to cry with pain. And finally she threatens us with revoking our visitation if mom looks stressed. I saw Mom Sunday April 20th and now mom is not awake, is not drinking, puss in her urine, haven't used the bathroom in 3 days and after last week having severe leg cramps from taking statin drugs. I told the Nurse Elgenia that "Mother needs to go to the hospital now and to Call Ginger". The nurse left and after about 45 minutes I asked the nurse if she got a hold of Ginger and she said yes. I asked her if she called, text or e-mail her. After several minutes of stalling she finally said she called her and left a message. I text Ginger and told her that mom is sick, that she has puss in her urine and if she does not call me in 30 minutes I am going to call 911 for an ambulance. After about 45 minutes I walk outside and call 911 for an ambulance. When the ambulance got there the nurse sent them away and about 30 minutes later Ginger sends a text that an ambulance has been called and that there is not puss in the Cather it is sediments.

I was shocked by Ginger and Hampton employees' behavior. They actually told the paramedics to leave. I notified Ginger 30 minutes before I called and asked her to call me, but she did not. So I had no choice. It is unbelievably arrogant that Ginger and her folks told them to leave and then turned around and called their own ambulance for my mother. I am left seeing the games this woman plays with my mother's life because she

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has to be one who decides—whether or not her delay harms my mother's life. When we got to the Hospital, Ginger sent an envelope of information with mom. It contained a letter stating that she was the guardian, a out of hospital DNR, Medicare coverage, medicine charts with the days issued cut out and a report that puss is in the urine.

There was nobody there to check mom in or to tell about her symptoms, what she was allergic to etc. Ginger did not sign mom in or even appear that night. **Mom signed in using her own name**. The sitter did not have a clue again how to address the problem. This is just one of many issues we have with Ginger. Ginger is not taking minimum care of mom. **Mom is left to fend for herself**. It is beyond gross neglect and cruel for Ginger to treat her way and I believe that Ginger is intentionally neglecting my mother to "stick it to me." I can't explain her neglect otherwise. Our "relationship" with Ginger has so poisoned, it's unfixable. My mother is in danger for it—if for no other reason than lack of communication and refusal to respond to us, who always know what she needs.

It is in the best interest of mom not to have to live in fear of retaliation and neglect. Mom deserves to be able to live the rest of her life with her family close to her sisters and brothers and she wants Cindy to be her guardian and for us to care for her, not Ginger. If Howard says otherwise, he lies. I have tape of her telling you, the Honorable Judge, what she wants. I pray for you to hear her cries before it's too late. We have spent over $70,000 at this point to protect her and our only desire is to take care of her and give her a happy life for as long as God has her here with us. We should not be bankrupt just to protect her, nor should her estate be charged all of these excessive fees.

She is suffering. This is so hard to bear. I can hardly sleep or work, worried about my mother and each time I visit, I grieve it could be the last. We love our mother dearly and take excellent care of her in the past and will in the present if allowed. We are good people and have great integrity. We believe it is time for Ginger to resign, be ordered to resign or removed. We plead Judge Butts that you will ask Ginger to step down or resign and allow Cindy to become mothers guardian and stop this emotional roller coaster ride. This has become to the point of mom and us being totally emotional, physical and financial exploited. There is no one there to protect her but you. In our first conference call during the summer of 2013, Clarinda would not listen to any complaints Cindy and I had regarding Silverado's neglect—the underlying basis for their sham bans on my visitation. She did not even know us yet and her bias was already set. You are our last hope. Please answer our prayers.

Thank you for your gracious consideration of our concerns,

Sherry Johnston
Cindy Pierce
Betty Jo Luckey

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §
COUNTY OF HARRIS §

On the 28 day of April 2014, SHERRY JOHNSTON appeared before me and testified under oath as follows:

"My name is SHERRY JOHNSTON. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this AFFIDAVIT. All statements made concerning me or otherwise therein are true and correct based upon my personal knowledge. At the December 5, 2013 TRO hearing and in later emails and discussions, Ginger Lott agreed to permit a drop cam to be installed in my mother's room at Hampton Senior Living #3. She was unfamiliar with drop cams, so I offered to purchase one and install it at my own cost. I installed the camera in plain view in January of 2014 with a sign in front, stating that this room is video and audio recorded. Denise, the nurse, assisted me. My camera remained on site until on or about July 18, 2014—when it was abruptly removed without explanation. Ginger Lott installed a second camera in the room during this time period, furnished by ADT Alarms. The Nursing home placed a noticeable sign stating that video surveillance occurred on this premises—on her door. The ADT camera is still in operation in the room today. I consulted experts prior to purchasing my drop cam to ensure all regulations were satisfied and ensured everyone knew it was present and recording.

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With two cameras operating in her room, it would have been almost impossible to miss the signs and notice of surveillance. The cameras were installed for her safety and well-being given her incapacitation and a series of recent injuries she suffered. The purpose was strictly to ensure my mother was well cared for and not neglected. Everyone entering her room was well aware of the surveillance and monitoring, such that there could be no expectation of privacy. Those who chose to engage in conversation in my mother's room did so knowing of this camera. For this reason, I do not believe Howard Reiner ever had any discussions in my mother's room without this awareness. Furthermore, the only thing I ever saw him say was Mrs. Mills as he excused himself. I did not see any conversations with my mother and her attorney beyond this greeting. My opinions concerning Mr. Reiner are few as I have not seen him in years. I have only a fundamental belief that he is not furthering my mother's desires and best interests based upon in court conduct and pleadings I have seen—wherein he asserts things that I simply know my mother would not say. He was first appointed my mom's AAL in 2008. Our contact was minimal but even then, I did not believe he was acting in my mother's best interest or had consulted her desires. Further affiant sayeth not."

Sherry Johnston

SHERRY JOHNSTON

SIGNED BEFORE ME THIS 28th DAY OF APRIL _____2014.

DARLA M. DUPLECION
MY COMMISSION EXPIRES
March 2, 2015

Darla M Duplecion

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

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CAUSE NO. 380624

IN THE GUARDIANSHIP OF	§	**IN THE DISTRICT COURT**
	§	
WILLIE JO MILLS	§	**OF HARRIS COUNTY, TEXAS**
	§	
AN INCAPACITATED PERSON	§	**PROBATE COURT 4**

AFFIDAVIT OF SHERRY JOHNSTON

STATE OF TEXAS §
COUNTY OF HARRIS §

On the 28th day of April, SHERRY JOHNSTON appeared before me and testified under oath as follows:

"My name is SHERRY JOHNSTON. I am over the age of 18, have never been convicted of a felony or crime involving moral turpitude, and am in all ways competent to execute this AFFIDAVIT. I have read the SECOND VERIFIED EMERGENCY TEMPORARY RESTRAINING ORDER FILED BY CINDY SUE PIERCE AGAINST GINGER SUE LOTT AND OUR LETTER TO HONORABLE JUDGE BUTTS. All statements made concerning me or otherwise therein are true and correct based upon my personal knowledge. Further affiant sayeth not."

Sherry Johnston
SHERRY JOHNSTON

SIGNED BEFORE ME THIS 28th DAY OF ~~FEBRUARY~~ April 2014.

DARLA M. DUPLECION
MY COMMISSION EXPIRES
March 2, 2015

Darla M Duplecion
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

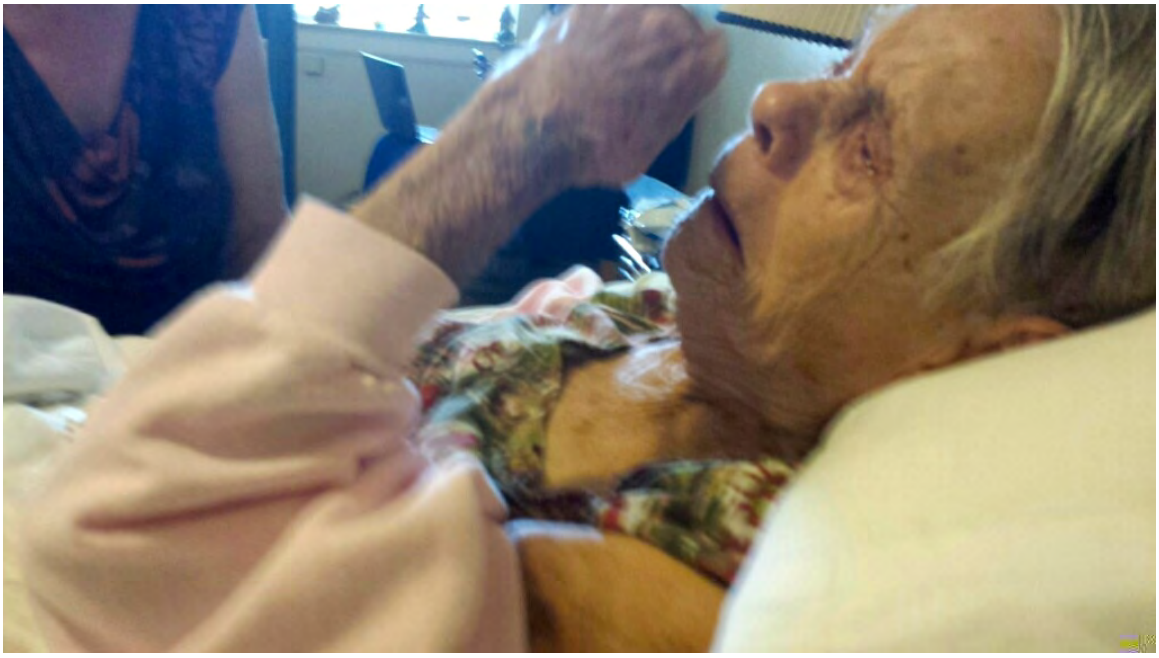
RECORDER'S **MEMORANDUM:**
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

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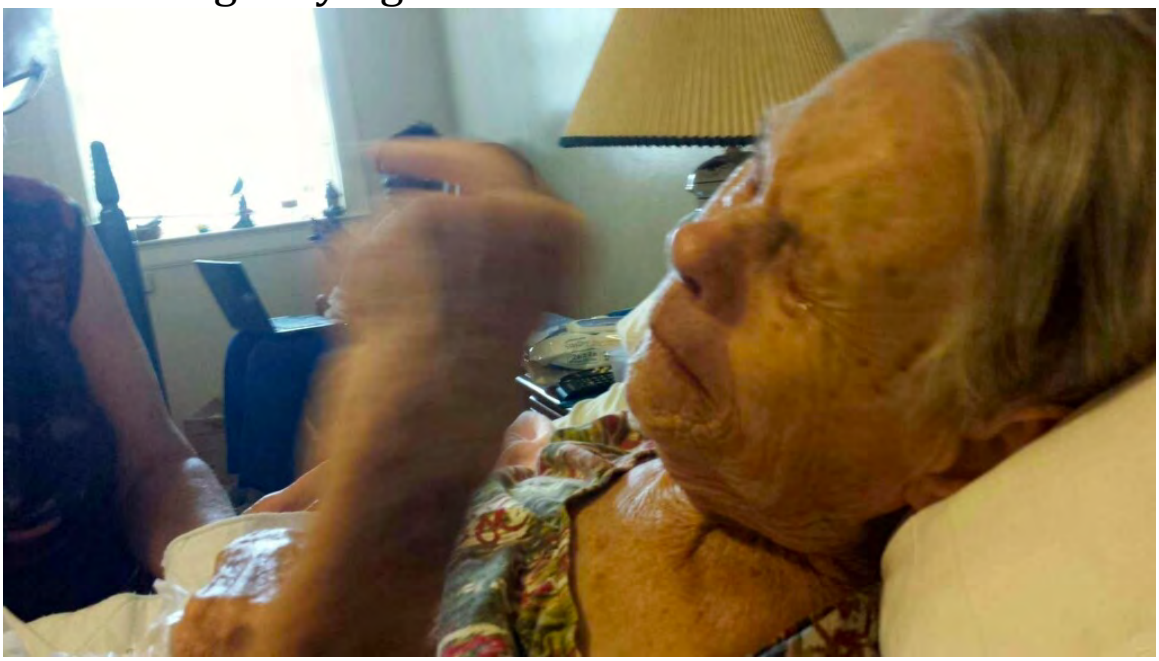
WILLIE JO MILLS (2012 – 2014)

Ginger Lott's Care

A. Statin Drugs Crying



B. Statin Drugs Crying



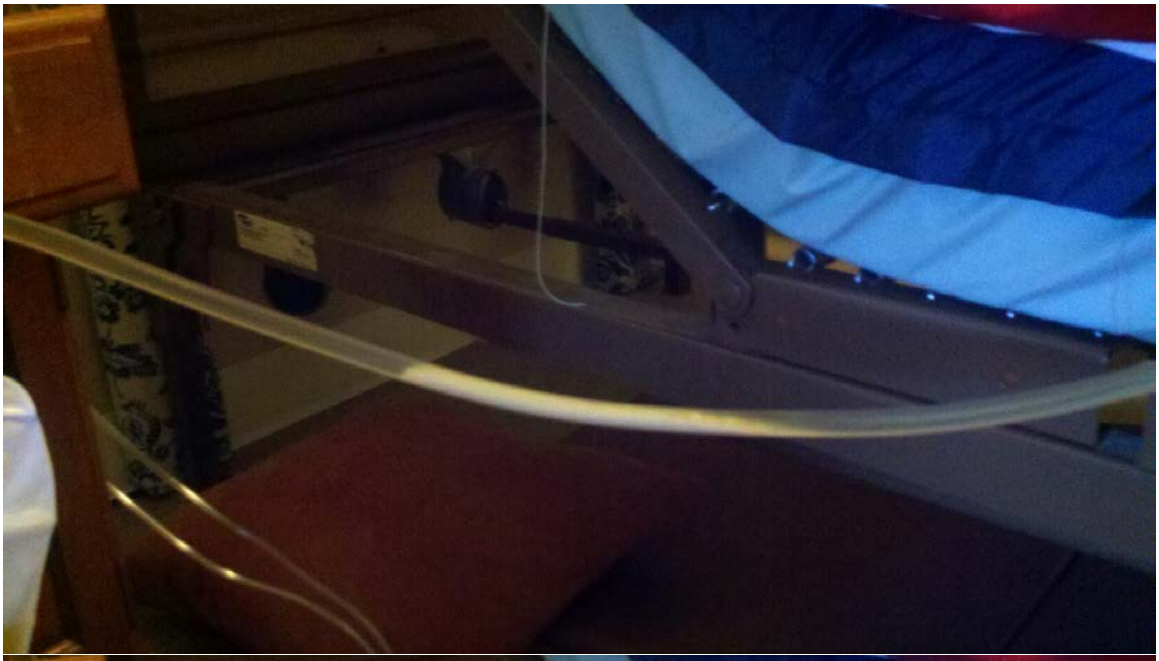
C. Asleep

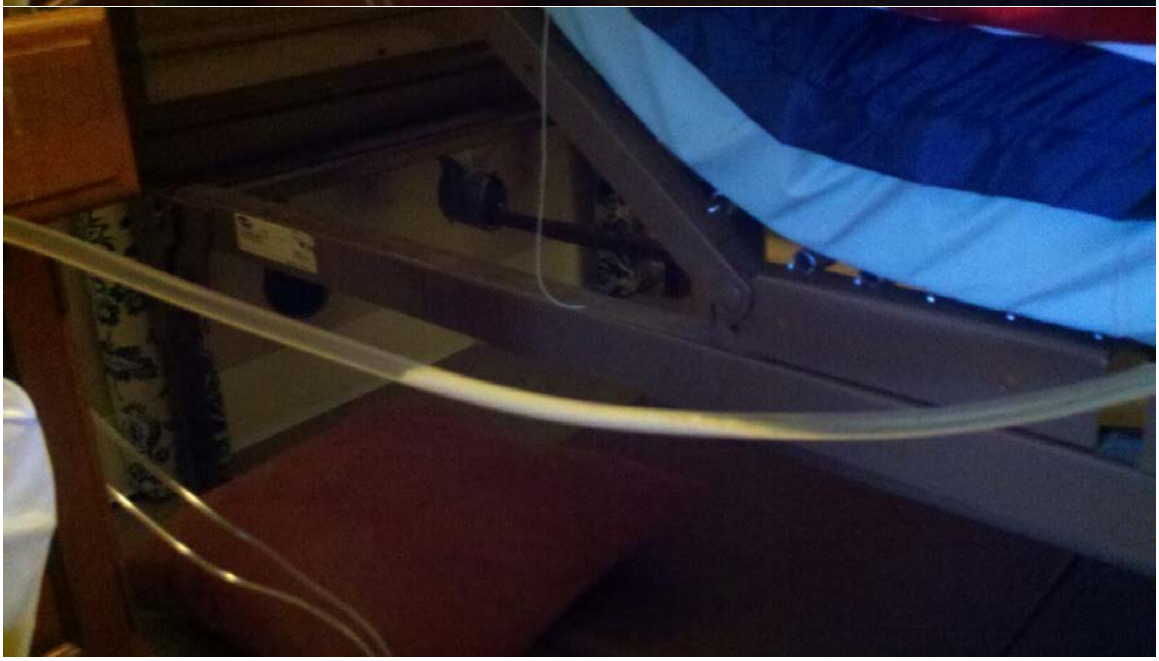


D. Sleeping



E. Pus in Catheter tub





F. wake up mom



G. Dark Urine, low output



H. Bedsores



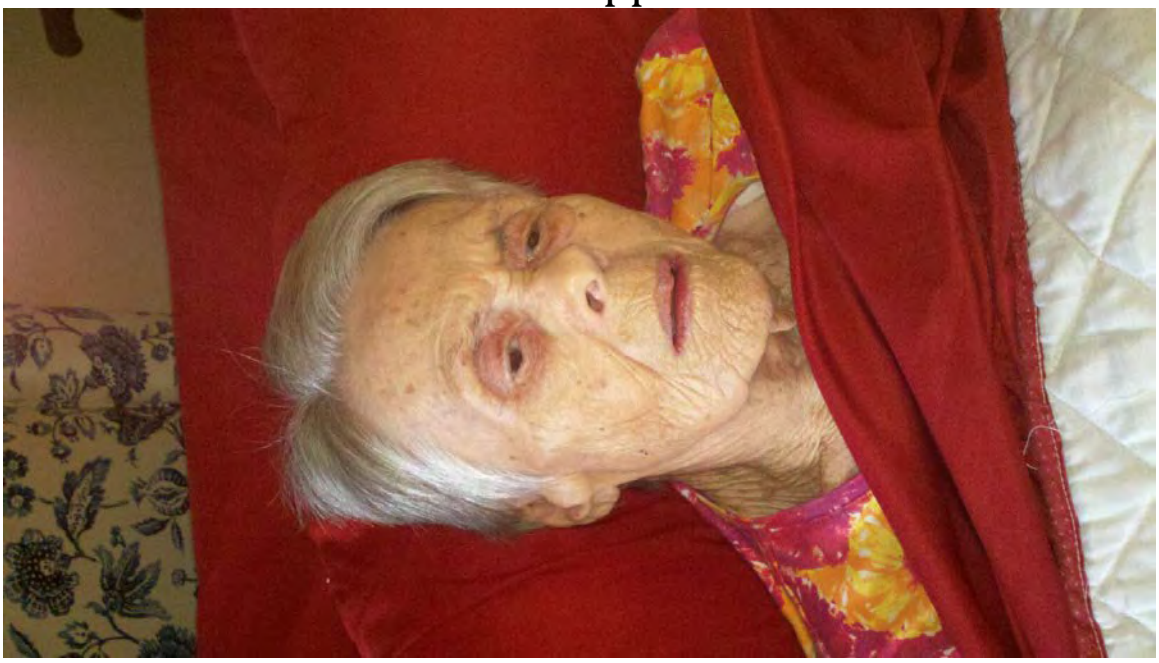
I. Mom's Thin Skin Malnutrition



J. Mom nearly dead



K. What happened?



L. Mom Legs



M. Methodist Papers



N. Mom



NOV. 27 2012 – Christmas 2013



Sherry Johnston had been providing fresh vegetable and fruit juices made at home
To Willie Jo, who seemed to recover her skin tone and color, able to eat again

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

NOVEMBER 27, 2012 BIRTHDAY



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

VALENTINES DAY 2012 – SHERRY JUICING MOM HEAVILY



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2
SPRING 2013 SHERRY JUICING MOM HEAVILY



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 20, 2013
DOUBLE DIAPER ILLEGAL AT HAMPTON



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 13,2013 WILLIE JO BROKEN LEG/FOOT HAMPTON



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

OCTOBER 23, 2013 SKIN TEARS AND BRUISING WITH PATCHES NOT DATED (ILLEGAL)





WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

NOVEMBER 2013 HAMPTON BEDSORES



NOVEMBER 2013 HAMPTON BEDSORES



WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

DECEMBER 4, 2013 POST-HOSPITALIZATION



SICK,DEPRESSED, NOT EATING, SEDATED, HAMPTON

WILLIE JO MILLS (2012 – PRESENT) – exhibit 2

DECEMBER 4, 2013



DECEMBER 4, 2013 LOTT'S "NEW BED" FOR MILLS



JOINT PRE-TRIAL ORDER

FS

Fox, Sherrie (Probate Courts)

Thu 5/1/2014 2:00 PM

Reply

To: schwagerlawfirm@live.com; problaw@aol.com; 'whester1969@gmail.com' (whester1969@gmail.com); Jason Ostrom (jason@ostromsain.com); Clarinda Comstock (ccomstock@mlbcc.com); LOUDITTA@CENATIEMPO.COM

Mills, WJ

You forwarded this message on 9/20/2016 8:07 AM

SHERRIE FOX.vcf
3 KB

WILLIE JO MILLS JOINT ...
35 KB

2 attachments (38 KB) Download all Save all to OneDrive - Personal

Counsel:

As most of you are probably aware, Cindy Pierce is the only party that has filed her $15,000.00 with the registry of the court by the deadline, April 30th. Betty Jo Lucky filed an inability to pay cost and Larry Mills filed a motion to withdraw. Therefore our only applicant is Cindy Pierce and the contestants are the attorney ad litem and the guardian ad litem.

To prepare for the trial in the referenced matter, attached is a Joint Pretrial Order form. Please work together to complete the form and forward it to my office by email, fax or delivery on or before noon on May 8, 2014. Do not file the original, but bring it to the pretrial conference which is set for Friday, May 9, 2014 at 9:00 AM.

Since the Motion in Limine previously set to start at 9am will now go away, we will begin at the same time with the pretrial.

Thank you in advance for your cooperation in completing this form.

Sincerely,
Sherrie Fox

SHERRIE FOX
Guardianship Coordinator
HARRIS COUNTY PROBATE COURT NO. 4

Harris County Civil Courthouse (713) 368-6767
201 Caroline, 7th Floor Fax (713) 368-7171
Houston, TX 77002 Email: sherrie.fox@prob.hctx.net

outlook.live.com/owa/projection.aspx

Send Attach Discard ...

To

Cc Bcc

Fw: Notification of Service for Case No. 380624 ()

SHERRIE FOX4.vcf
3 KB

From: Fox, Sherrie (Probate Courts) <Sherrie.Fox@prob.hctx.net>
Sent: Monday, May 5, 2014 1:33 PM
To: 'Candice Schwager'
Cc: Louis M. Ditta; Bill Hester; jason@ostromsain.com; Problaw@aol.com; Clarinda Comstock; Lopez, Hipolita (Probate Courts)
Subject: RE: Notification of Service for Case No. 380624 ()

Ms. Schwager,

The court will not be scheduling a hearing on the amended second TRO. The court does not see an emergency and the case will be tried within two weeks.

Sherrie Fox

SHERRIE FOX
Guardianship Coordinator
HARRIS COUNTY PROBATE COURT NO. 4

Send Discard Draft saved at 4:21 PM

Exhibit U, Dec. 19, 2016
Page 1 of 1

AMM

FILED
6/17/2014 1:01:31 PM
Stan Stanart
County Clerk
Harris County

06132014 0956 P01 1

PROBATE COURT 4

NO. 380,624

IN THE GUARDIANSHIP OF	§	IN THE PROBATE COURT
	§	
WILLE JO MILLS,	§	NUMBER FOUR (4) OF
	§	
AN INCAPACITATED ADULT	§	HARRIS COUNTY, TEXAS

SUPPLEMENTAL REPORT OF GUARDIAN AD LITEM

TO THE HONORABLE JUDGE OF SAID COURT:

CLARINDA COMSTOCK, Guardian Ad Litem ("GAL") was appointed on June 17, 2013 to investigate allegations made by family members concerning the best interests and care of the Ward, Willie Jo Mills. Since that time, competing pleadings have been filed by certain family members, the Successor Guardian of the Person and the Attorney Ad Litem. The Contest to the appointment of the Successor Guardian of the Person has been resolved by recent court orders. The GAL makes the following supplemental report regarding the best interests of Willie Jo Mills, Ward and asks to be discharged as Guardian Ad Litem.

I. SUMMARY OF RECOMMENDATIONS

1. Numerous allegations have been made against the Successor Guardian of the Person, the Guardian Ad Litem, the Attorney Ad Litem, the Court, and others in pleadings filed in this matter by the daughters of Willie Jo Mills, Cindy Pierce and Sherry Johnston, and by her granddaughter, Betty Jo Luckey ("Contestants"). It is believed that such allegations have been asserted primarily out of concern for the Ward's best interests, although the methods and allegations themselves have been inflammatory and counter-productive. Contrary to allegations made, the undersigned interviewed interested individuals fully identified by the Contestants in an effort to ascertain the "best interests" in this case as part of her investigation and concluded that the behavior and methods of Sherry Johnston and Cindy Pierce, in addition to the overall family

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discord which is evident in this case, has compromised Mrs. Mills' care. Such behavior includes unnecessarily involving Mrs. Mills in family disputes and disputes with care providers, outbursts, interference with medical treatment and failure to follow instructions of caregivers and the guardian.

2. A meeting was held on June 6, 2014 with the following in attendance: Sherry Johnston, Cindy Pierce, Betty Jo Luckey, their attorney Bill Hester, Larry Mills, Ginger Lott, Guardian of the Person ("Ms. Lott"), and her attorney Louis Ditta, Howard Reiner, Attorney Ad Litem and the undersigned Guardian Ad Litem. Howard Reiner led the meeting with the goal of opening lines of communication among the parties. The family participated in a productive manner, despite obvious continuing family discord. The following issues were discussed at that meeting:

a) Ms. Lott would review issues raised regarding sitters, replace sitters as needed or as problems arise, clarify the role of sitters vs. nursing staff, and sitters will continue to be provided from 7AM to 7PM daily. The family will contact Ms. Lott regarding problems related to sitters.

b) Sitters will be encouraged to keep logs documenting incontinent care, nutrition, hydration and blood pressure. Support pillows will be utilized consistent with medical opinion.

c) Ms. Lott will work with the family to locate a nursing facility in the Kingwood area that can accommodate Mrs. Mills' needs.

d) A family meeting was scheduled at the Hampton for June 10, 2014 at 10:00 AM to discuss the medication list, speech therapy, swallow tests, social work and nutrition issues.

e) Upon further discussions with Ms. Lott, it was determined that Ms. Lott would field all future care issues, and address them with the home. Additionally, the doctors would evaluate Ms. Mills to determine whether additional foods and liquids can be introduced into her diet. No one is to bring any outside foods or liquids until authorized by the doctor.

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f) In the event that a situation arises creating the need for Ms. Lott to limit visitation of any family member, a meeting or telephone conference will be scheduled within 48 hours of such decision being made, to discuss the situation and future actions to be taken.

g) Family members agreed to follow the instructions of medical providers and, if family disagrees with the treatment plan, a second medical opinion may be requested to be performed by a medical provider who does not regularly provide services for the residential care facility. Family members will be provided access to Mrs. Mills' medical records by Ms. Lott at appropriate times when Ms. Lott believes that doing so is in the best interest of Mrs. Mills.

h) Hospice care and the Medical Directive previously signed by Mrs. Mills were discussed. It was agreed that, prior to Mrs. Mills being placed on hospice care, Ms. Lott will discuss this decision with the family, except in the case when an emergency situation prevents her doing so.

SUMMARY AND RECOMMENDATIONS

3. In light of obvious, on-going family discord and concerns regarding appropriate care of Mrs. Mills, the undersigned remains convinced that a third party guardian is in the best interests of Willie Jo Mills, Ward. It is recommended that Ginger Lott, or other appropriate third party as may be necessary and in Mrs. Mills' best interest, remain appointed as Guardian of the Person in this case. It is encouraging that some family members appear to be open to cooperating with the Successor Guardian, maintaining reasonable, respectful communication and addressing the needs of Mrs. Mills at this crucial time in her life and care. As it appears that an effort is being made in this regard, the undersigned requests that she be discharged as Guardian Ad Litem in this case.

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Respectfully submitted,

BENSON COMSTOCK, LLP

Clarinda Comstock, P.C.
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Houston, Texas 77056
Telephone: 713-961-8011
Facsimile No.: 713-961-8022
GUARDIAN AD LITEM

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent according to the Texas Rules of Civil Procedure to the following parties and counsel of record on this the 17th day of June, 2014, as follows:

Mr. William Hester, Jr.
12941 North Freeway, Suite 423
Houston Texas 77060
281-586-7999 (Tel)
281-586-7997 (Fax)
whester1969@gmail.com

Mr. Louis Ditta
770 South Post Oak Ln, Suite 500
Houston, Texas 77056
713-650-1550 (Tel)
713-655-1550 (Fax)
louditta@cenatiempo.com

Howard M. Reiner
Howard M Reiner & Associates
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Houston, TX 77027
713-963-8004 (Tel)
problaw@aol.com

Clarinda Comstock, P.C.

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NO. 380,624

IN RE THE MATTER OF	§	**IN THE PROBATE COURT**
	§	
WILLIE JO MILLS,	§	**NUMBER FOUR (4) OF**
	§	
AN INCAPACITATED PERSON	§	**HARRIS COUNTY, TEXAS**

ORDER DISCHARGING GUARDIAN AD LITEM

On this day, the Court considered the Supplemental Report of Guardian Ad Litem and the pleadings on file in this matter, and finds that the continued appointment of a guardian ad litem is no longer necessary to protect the best interests of the Ward at this time. Therefore, Clarinda Comstock, Guardian Ad Litem is hereby discharged from further service in the above-referenced matter.

SIGNED on the _____ day of _____, 2014.

_____
JUDGE PRESIDING

Please send conformed copy to:

Clarinda Comstock
Benson Comstock, LLP
One Riverway, Suite 2300
Houston, Texas 77056
Telephone: (713) 961-8020
Facsimile: (713) 961-8022

CERTIFICATION OF VITAL RECORD

CITY OF HOUSTON, TEXAS, USA

STATE OF TEXAS **CERTIFICATE OF DEATH** **STATE FILE NUMBER**

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS UNIT

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last)			(Maiden)	2. DATE OF DEATH - ACTUAL OR PRESUMED (mm-dd-yyyy)
WILLIE JO MILLS			ARNEY	SEPTEMBER 27, 2014
3. SEX	4. DATE OF BIRTH (mm-dd-yyyy)	5. AGE-Last Birthday (Years)	IF UNDER 1 YR Mo / Days	IF UNDER 1 DAY Hours / Min	6. BIRTHPLACE (City & State or Foreign Country)
FEMALE	NOVEMBER [redacted]	86			WAVERLY, TN
7. SOCIAL SECURITY NUMBER	8. MARITAL STATUS AT TIME OF DEATH				9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)
[redacted]	☒ Widowed ☐ Divorced ☐ Never Married ☐ Unknown ☐ Married				
10a. RESIDENCE STREET ADDRESS			10b. APT. NO.	10c. CITY OR TOWN	
2238 MAXIMILLIAN				HOUSTON	
10d. COUNTY	10e. STATE		10f. ZIP CODE	10g. INSIDE CITY LIMITS?	
HARRIS	TEXAS		77039	☒ Yes ☐ No	
11. FATHER'S NAME			12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE		
WILLIE ROSCOE ARNEY			BERTHA E. PRUITT		

13. PLACE OF DEATH (CHECK ONLY ONE)

IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA

IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☒ Nursing Home ☐ Decedent's Home ☐ Other (Specify)

14. COUNTY OF DEATH	15. CITY/TOWN, ZIP (IF OUTSIDE CITY LIMITS, GIVE PRECINCT NO)	16. FACILITY NAME (If not institution, give street address)
MONTGOMERY	HOUSTON, 77339	EMERITUS AT KINGWOOD

17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED	18. MAILING ADDRESS OF INFORMANT (Street and Number,City,State,Zip Code)
LARRY MILLIS - SON	3103 BIRCH PARK LN, HOUSTON, TX 77073

19. METHOD OF DISPOSITION	20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH	21. ☐ Unknown
☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)	HEATHER RENEE PURCELL ,BY ELECTRONIC SIGNATURE - 112953	Section D Block Lot 70 Space 4

22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)	23. LOCATION (City/Town, and State)
BROOKSIDE MEMORIAL PARK	HOUSTON, TX

24. NAME OF FUNERAL FACILITY	25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code)
BROOKSIDE FUNERAL HOME	13747 EASTEX FREEWAY, HOUSTON, TX 77039

26. CERTIFIER (Check only one)

☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.

☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time,date and place, and due to the cause(s) and manner stated.

27.SIGNATURE OF CERTIFIER	28. DATE CERTIFIED (mm-dd-yyyy)	29. LICENSE NUMBER	30. TIME OF DEATH(Actual or presumed)
JOSEPH B GUERRINI , BY ELECTRONIC SIGNATURE	OCTOBER 6, 2014	F2698	02:00 PM

31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City,State,Zip Code)	32. TITLE OF CERTIFIER
JOSEPH B GUERRINI 530 NORTH SAM HOUSTON PKWY, #230, HOUSTON, TX 77060	MD

WARNING

The penalty for knowingly making a false statement in this form can be 2-10 years in prison and a fine up to $10,000. (Health and Safety Code, Sec. 195, 1989)

CAUSE OF DEATH

33. PART 1. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH.

Approximate interval Onset to death

IMMEDIATE CAUSE (Final disease or condition ------> resulting in death)
a. DIABETES MELLITUS — YEARS
Due to (or as a consequence of):

Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated, the events resulting in death) LAST
b. CEREBRALVASCULAR DISEASE ACUTE — YEARS
Due to (or as a consequence of):
c. DEMENTIA — YEARS
Due to (or as a consequence of):
d.

PART 2. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I.

HYPERTENSION YEARS

34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No

35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No

36. MANNER OF DEATH	37. DID TOBACCO USE CONTRIBUTE TO DEATH?	38. IF FEMALE:	39. IF TRANSPORTATION INJURY, SPECIFY:
☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined	☐ Yes ☒ No ☐ Probably ☐ Unknown	☒ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year	☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)

40a. DATE OF INJURY(mm-dd-yyyy)	40b. TIME OF INJURY	40c. INJURY AT WORK?	40d. PLACE OF INJURY (e.g, Decedent's home, construction site, restaurant, wooded area)
		☐ Yes ☐ No	

40e. LOCATION (Street and Number, City,State,Zip Code)

40f. COUNTY OF INJURY

41. DESCRIBE HOW INJURY occurred

42a. REGISTRAR FILE NO.	42b. DATE RECEIVED BY LOCAL REGISTRAR	42c. REGISTRAR
0216724	OCTOBER 8, 2014	REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

VS-112 REV 1/2006

EDR NUMBER 000001583286

DATE ISSUED Oct 20, 2014

This is to certify that this is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code of Texas. This copy not valid without engraved border displaying seal and signature of the Registrar.

Lisa Akheituame, Registrar
BUREAU OF VITAL STATISTICS

1025555263

THE STATE OF TEXAS

HEALTH AND HUMAN SERVICES DEPARTMENT VITAL STATISTICS CITY OF HOUSTON

American Bank Note Company

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE