

**FOR THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY**

PROBATE/GUARDIANSHIP DIVISION

In Re: The Guardianship Petition on

PATRICIA SAHM

An Alleged Incapacitated Person/Person in Need of Protection

CASE NO.: 2023 MH-1072, 2023 GA-245

Judge: Burton, Charles

REPORT OF MEDICAL EXPERT EXAMINATION

If it please the Court.

The undersigned, a Board-Certified Specialist in General Internal Medicine fully licensed to practice Medicine in all its branches in the State of Florida (License ME 81368) with over 50 years of clinical experience and having had further experience as a court-appointed examiner in Martin County, Florida, reports that a comprehensive independent examination has been completed.

The undersigned was retained by Counsel, Amber Patwell, Esq. of 136 4th St. N., Ofc. 356, St. Petersburg, Fl 33701 to perform, complete and report on a comprehensive incapacity examination on the allegedly incapacitated individual in question, PATRICIA SAHM

The examination was performed on June 6, 2023, in my office in Hollywood/Fort Lauderdale, Florida.

I possess the credentials, knowledge, skill, experience, and training necessary to testify in this matter.

This report is not based on opinion but rather on the application of widely accepted methods and objective findings and facts consistent with Federal Rules of Evidence 90.702

As part of this examination, I carefully reviewed the reports to the Court from Stanley Bloom, MD and from Steven Cheshire MSW.

The report of my comprehensive examination with evaluations, functional assessment and recommendations follows.

IDENTIFYING INFORMATION: obtained from the allegedly incapacitated person (AIP) and her daughter, Patricia Jr.

The AIP provided the following information:

Her current address is 21843 Town Place Dr, Boca Raton, Florida 33433

Date of Birth: 8/2/41 (81 years of age)

Marital status: Widow since 2021.

Occupation: Physical Education instructor (master's level)

Next of Kin: Patricia Sahm Jr. Cell Phone 561 714 6949

CASE HISTORY:

This case is adversarial to my knowledge.

To the knowledge of this examiner, there has been no specific prior incapacity alleged until the death of her husband and a contest over the estate and its assets and incomes.

I examined this individual at the request of her Counsel.

The comprehensive examination took more than one hour, and preparation of this report took more than one hour. Present at the outset of the appointment were the AIP and her daughter, Patty.

Consultation with Primary or Family Physician was not possible because the AIP has not needed care and has not obtained a PCP despite efforts to do so since moving back to Boca Raton.

She has an appointment with a neurologist in the future.

Social history:

Information regarding social history was taken to the extent possible from the allegedly incapacitated person. She lives with her daughter part time and otherwise is self-sufficient. She states she can shop, drive to Publix and the bank, bathe and dress herself without assistance. She frequently eats out without difficulty at Kiki's for breakfast or to First Watch restaurant. Her primary meals are breakfast and lunch, usually out. Dinner is light and at home. She often sleeps in a recliner in front of the TV or after reading. She sleeps through the night. She uses no assistive devices and could walk 2-5 miles without difficulty. She has a master's degree Physical Education. She has no physical disability. She plays tennis several times per month without difficulty. In 2011 she received 2 new knees without difficulty. She wears glasses only to read. She does not require hearing aids. She has never been a danger to herself or others. She has no history of being neglected, abused, or exploited. She is aware that she has two sources of income, her Social Security monthly check and her teachers' pension

monthly check. She has no access to those funds or their amounts or the value of her assets as they have been diverted to her daughter Joanna who does not divulge to her any information about those income streams. It was for these reasons among others that the AIP revoked her advance directives naming Joanna earlier this year.

PRIOR DIAGNOSES: At this time AIP does not have a regular or family doctor with whom I could consult. According to available information, she has a past medical history of lipidemia, anxiety and osteopenia.

It is not clear who prescribed these medications or is following the patient.

AIP's Current medications include:

Amitriptyline 25 mg for anxiety since May 10, 2023 hearing

Sertraline 50 mg for stress management

Simvastatin 20 mg to lower cholesterol

Donepezil 10 mg at bedtime for prevention of progression of mild cognitive impairment

Alendronate 70 mg to prevent bone fractures.

CAPACITY HISTORY:

This examination was to assess current capacity levels and the need for court intervention and protection. She has never been told she had any capacity issues before the end of 2022. The alleged current clinical memory issues as well as the ongoing dispute between the sisters and its consequences, were likely precipitated by the death of her husband January 5, 2021. Thereafter, her daughter Joanna took control of all aspects of the AIP's finances including her teacher's pension and Social Security payments, all of which bypass the AIP and go directly to Joanna. The AIP must verbally request money every time she needs any. It is then doled out in small subsistence amounts. The AIP has been denied access to any of her funds and has been prevented from knowing how much money she has, where it is located or what it is being used for. The AIP is not aware of the existence or location of any alleged advance directives.

Apparently, the petition for guardianship is an outgrowth of a struggle between the two daughters for control of their mother's life and control over their late father's estate and assets. The primary concern for the petitioner Joanna appears to be about money, not the welfare of the AIP, her own mother.

There is great animus between the sisters for numerous issues. It even recently reached the point where Patty brandished an unloaded weapon at Joanna.

EXAMINATION

I performed a comprehensive Physical Examination on the AIP to obtain an objective cross-sectional description of the patient's mental state which allows for an accurate assessment and formulation, which are required for accurate recommendations to the Court. The encounter occurred over an approximate 1.5 hour period. The encounter including the physical examination took place at my office.

Appearance:

The patient initially appeared younger than her stated age. She was polite, pleasant and appropriate.

Clothing is age appropriate, clean and situationally appropriate.

Grooming and personal hygiene were appropriate.

Nutrition and hydration appeared adequate.

Skin is markedly damaged from years of solar exposure.

Attitude:

The patient is conversant, not confused, appropriate, respectful and develops rapport without difficulty. She understands the purpose of the examination and is compliant and cooperative.

Behavior:

There is no evidence of abnormal movements. She makes very good eye contact, has no tremors or tics. Her behavior was appropriate.

Mood: Was calm. Communication skills are adequate. Affect is appropriate and rational.

Speech: The patient's vocabulary is adequate to communicate. Tone and loudness of voice are normal. Articulation is normal. Sentence structure and linguistics are normal and age appropriate. Speech is fluid.

Thought process: The patient's quantity, tempo, form and logical coherence of thought are generally age-appropriate with moments of hesitation.

Thought content: There is no evidence of delusions, phobias or preoccupations in the patient's thought content.

Perceptions: There is no evidence of hallucinations, pseudo hallucinations or abnormal illusions.

Cognition: The patient exhibited normal alertness, full attention and was oriented to date, time, person or place on direct questioning

Simple Memory testing showed significant abnormalities in short term memory. Her long-term memory is mostly intact.

Comprehensive mental and cognition testing was performed.

Executive functions are globally intact.

On direct testing, mathematical problem-solving proved difficult. The patient was not able to successfully perform serial sevens past attempt two. Visuospatial functioning was somewhat impaired. Language skills were not impaired. Executive functioning was not compromised.

Insight: The patient had insight into her current perilous situation and was able to identify that she wants to avoid any court based interventions into her life. She is well aware that she has long had problems with Joanna and does not get along with and is uncomfortable with her dominating her life.

Self Awareness: The patient displays age appropriate self-awareness, planning ability and social cognition. She appears to have or exercise the capacity to make sound, reasoned and responsible decisions even for a person her age.

Impact of current Medications: not apparent

Physical Exam

Physical Examination:

Blood pressure/Pulse 110/84 , 76

General Appearance: massive solar dermatitis, lean, good posture, well groomed, normally developed female

Head-- is normocephalic. Hair is full and silver. No alopecia

Ears- there is no cerumen in either tympanic canal. Hearing is normal.

Eyes—Arcus senilis is present bilaterally.

Nose/ throat-- no abnormalities detected.

Dentition is excellent, all her own original teeth are present.

Thyroid normal size

Lungs; clear to auscultation

Heart Sounds;, heart sounds are normal with no murmurs. Rhythm appears to in sinus.

Abdomen; without organ enlargement or tenderness to palpation, decreased bowel sounds noted

Extremities; Knee replacement scars. No edema noted. Excellent function in all large joints.

Pulses palpable symmetrically. No carotid bruits.

Neurologic; reflexes symmetrical.

Skin: extensive solar damage. One healing ulcer on left Achilles area. An ulcerating squamous cell carcinoma is obvious on her right lower leg.

PROFESSIONAL MEDICAL DIAGNOSIS:

Age related "Cognitive decline" with some short-term memory loss

Good Physical Health for her age

Normal cognitive ability for her age

FUNCTIONAL ASSESSMENT:

Threat Assessment: there is no obvious or apparent external threat to the AIP.

AIP does not pose a threat to her own well-being and is functionally capable of determining her own life choices with minimal assistance.

The following commonly accepted functional assessments were performed and completed:

Katz index of independence in activities of daily living:

Score 6 out of 6 = Patient is highly independent

Instrumental activities of daily living scale

Score 7 of possible 8 = Patient is capable of almost all ADL's

Montréal cognitive assessment

Score- 20 of possible 30 = mild to moderate impairment in cognition

Abbreviated mental test score.

Score 7 out of possible 9= no evidence of significant dementia

Clock drawing-- scored 3/5 points indicated mild cognitive impairment.

Discussion:

The mild memory and cognition impairment issues of this very healthy octogenarian patient are age appropriate and are not severe enough to significantly interfere with her safe routine activities of daily living.

Regarding finances, the AIP does not have the opportunity for us to know how adept she might be at handling all her finances, since her daughter Joanna has prevented her from knowing anything about her assets and diverting all her income to herself and forcing her mother to request small transfers of money for her daily needs.

Regarding her math aptitude, she claims she has been terrible at math for her entire life and that has not appreciably changed into her 80's. Nonetheless she was able to perform serial sevens for one round.

There are major problems with the "facts" contained in the prior court ordered evaluations in that, despite the examiners' assertions to the contrary the patient **can and does** regularly drive her 2010 Mercury Mariner SUV without incident, travels alone, shops for herself, eats out regularly, successfully takes her medications, handles simple financial transactions and can effectively use a credit card. For more complicated financial transactions, she has adequate family help available to her. She is aware of the legal dispute between her daughters, and she has the insight to say it makes her so anxious and distraught that she pretends not to know about it.

Furthermore, contrary to Florida statutes, it appears that the three court appointed examiners conducted their examinations simultaneously and, in each other's presence, and openly colluded on their opinions, rendering them **not** independent and therefore improper.

Additionally, retired urologist 86-year-old examiner Stanley Bloom MD, while licensed in New York through 2024 (New York License #099696 since 1967), is not a licensed Florida Physician and therefore cannot practice medicine in this state. He never was in the presence of the AIP for this "examination". He appeared only by Zoom during the time the Cheshires (the other two court appointed non physician examiners who are related) were simultaneously performing their evaluations, which may explain why he and the Cheshires failed perform any physical exam as required by statute. Bloom does not fulfill the statutory criteria to be a Physician examiner and his examination should be disregarded.

To quote from 744.331

The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

None of the examiner reports gives a credible reason for the absence of a physical examination. In fact, the only examiner even theoretically capable of an examination (Bloom) was not even present in person at the time. The excuse that the result of such an examination would not change the outcome is contemptuous the statute, invalidates the outcome and reveals a bias toward creating rather than preventing guardianship.

From the objective and factual evidence, it is not at all evident that removal of any of her rights would benefit or protect this woman at this time. But because of advancing age and normal decline and, of course, the stress of serious family dysfunction, the court may wish to provide a proper and transparent fiduciary over the AIP's finances by way of a temporary limited conservator/independent fiduciary of the estate.

Mild cognitive dysfunction in an otherwise healthy and active octogenarian should not be addressed by court ordered removal of any of her God given rights. A guardianship—even a limited one-- would effectively be a life sentence. Rather, the Court is advised of the real dangers of removal of rights in such a situation of family dysfunction and consequent litigation about money, including the predictable court ordered isolation, protracted stressful and very expensive litigation, dissipation of assets, forced, imposed relocation from residence to a facility, high risk of overmedication, and a host of other adverse consequences.

This woman's age-appropriate mild impairment does not rise to a level that requires the court to impose the most restrictive solution, draconian guardianship.

CERTIFICATION

I certify that, to the best of my ability, I have examined the alleged incapacitated person in accordance and compliance with the requirements of section 744.331 of the Florida guardianship law, performing the examination and testing necessary to determine which, if any, rights should be removed from the allegedly incapacitated person because she cannot sufficiently or adequately exercise. These conclusions, evaluations and recommendations are hereby presented to the court.

I do have knowledge of the type of incapacity alleged in the petition to determine incapacity.

executed this Sixth Day of June 2023

Electronic Signature

Sam J. Sugar MD, FACP

typed or printed name

Respectfully submitted.

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