

Name (and if Attorney, Attorney's Number)

Address

City, State, Zip Code

Telephone Number

Attorney for Petitioner

IN THE FAMILY COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

In the Matter of the Guardianship of)	FC-G No.
)	
)	ORDER APPOINTING GUARDIAN
)	WITH <input type="checkbox"/> LIMITED <input type="checkbox"/> UNLIMITED
_____ ,)	AUTHORITY; EXHIBIT "A"
(Full Legal Name))	
)	Hearing Date: _____
)	
<u>An Incapacitated Person.</u>)	Judge: _____

ORDER APPOINTING GUARDIAN WITH
 LIMITED UNLIMITED AUTHORITY

This matter came on for hearing on the above-mentioned date before the Honorable _____, Judge of the Family Court, Second Circuit.
(Full Name of Judge)

Following that hearing and after full consideration of all of the evidence, the Court finds that:

1. This Court has jurisdiction and is the proper venue in this matter;
2. The material allegations of the *Petition for the Appointment of Guardian of an Incapacitated Person* are true;
3. It has been proven by clear and convincing evidence that:
 - a. _____ is an incapacitated person as defined in HRS § 560:5-102.
(Name of Respondent)
 - b. The Incapacitated Person's identified needs cannot be met by less restrictive means including the use of appropriate and reasonably available technological assistance.
4. Appointment of a Guardian is necessary in order to provide continuing care and supervision of said Incapacitated Person;
5. The Incapacitated Person was properly served with a notice which complies with the provisions in HRS§ 560:5-309(a);
6. _____ is a fit and proper person and the best qualified to serve as Guardian;
(Name of Proposed Guardian)
7. The Guardian shall have unlimited authority because:
8. The Guardian shall have limited authority because:

NOW THEREFOR,

IT IS HEREBY ORDERED that _____
(Name of Proposed Guardian)

be and is hereby appointed Guardian of _____
(Name of Incapacitated Person)

to make decisions regarding the Incapacitated Person's support, care, education, health and welfare, subject to the provisions in HRS §§ 560:5-314, 560:5-315, and 560:5-316. The Guardian shall exercise authority only as needed due to the incapacitated person's limitations and if possible, shall encourage his/her participation in decisions regarding his/her personal affairs, acting on his/her own behalf, and developing or regaining the capacity to manage his/her personal affairs. The Guardian shall consider the expressed desires and personal values of the Incapacitated Person to the extent known to the Guardian. At all times, the Guardian shall act in the Incapacitated Person's best interests and exercise reasonable care, diligence, and prudence.

IT IS FURTHER ORDERED THAT the Guardian shall have the duties and powers pursuant to HRS § 560:5-314 and 560:5-315, which are included in Exhibit "A", attached hereto.

IT IS HEREBY ORDERED THAT THE GUARDIAN SHALL HAVE:

limited authority as provided below:

unlimited authority

IT IS HEREBY FURTHER ORDERED that:

1. The Guardian have the rights and immunities of guardian pursuant to HRS § 560:5-316, included in Exhibit "A" attached hereto.

2. The Guardian shall provide a written report to the Court of the condition of the Incapacitated Person, account for money and other assets in the Guardian's possession or control, and such other matters as the Court may direct within thirty (30) days of the filing of this Order and at least annually thereafter by the _____ day of _____, and whenever ordered by the Court, and shall give notice within fourteen (14) days of the filing of this report, together with a copy of the report to the Incapacitated Person [] and: *(state name and address)*

Name:

Address:

3. That the Guardian shall serve without bond and with prior court approval, is entitled to reasonable compensation from the Incapacitated Person's estate for services as Guardian and to reimbursement for room, board, and clothing provided to the Incapacitated Person. See Exhibit A.

4. That the Guardian shall be discharged upon the death of the Incapacitated Person or upon further order of the Court, but termination does not affect the liability of the Guardian for prior acts, nor the Guardian's obligation to account for funds and assets of the Incapacitated Person.

5. That, within fourteen (14) days of the filing of this Order, the Guardian shall send or deliver a certified copy of this Order to the Incapacitated Person and all other persons noticed of the hearing on this petition, together with notice of the right to request termination or modification of this Order.

6. Upon filing, a copy of this Order shall be delivered by the Guardian to the Special Services Branch which is located at Hoapili Hale Courthouse, 2nd Floor, Room 206, Wailuku, Hawaii, 96793. This is so that the Special Services Branch can monitor the filing of Annual Reports.

DATED: Wailuku, Maui, Hawai'i, _____

JUDGE OF THE ABOVE-ENTITLED COURT

Hawai'i Revised Statutes

§ 560:5-314. Duties of guardian.

- (a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.
- (b) A guardian shall:
 - (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;
 - (2) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;
 - (3) Expend money of the ward that has been received by the guardian, for the ward's current needs for support, care, education, health, and welfare;
 - (4) Conserve any excess money of the ward for the ward's future needs; provided that if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;
 - (5) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and
 - (6) Inform the court of any change in the ward's custodial dwelling or address.

§ 560:5-315. Powers of guardian.

- (a) Except as otherwise limited by the court, a guardian may:
 - (1) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
 - (2) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling; provided that a guardian may only establish or move the ward's place of dwelling outside this State upon express authorization of the court;
 - (3) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
 - (4) Consent to medical or other care, treatment, or service for the ward;
 - (5) Consent to the marriage or divorce of the ward; and
 - (6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.
- (b) The court may specifically authorize the guardian to consent to the adoption of the ward.

EXHIBIT A

§ 560:5-316. Rights and immunities of guardian; limitations.

- (a) A guardian shall be entitled to such reasonable compensation from the ward's estate for services as guardian and to reimbursement for room, board, and clothing provided to the ward, as is approved by order of the court.
- (b) A guardian is not:
 - (1) Legally obligated to use the guardian's personal funds for the ward's expenses;
 - (2) Unless otherwise provided in the contract, individually liable on a contract properly entered into in the guardian's representative capacity in the exercise of the duties and powers as guardian unless the guardian fails to reveal the guardian's capacity and the identity of the ward in the contract;
 - (3) Personally liable to a third person for acts of the ward solely by reason of the relationship; and
 - (4) Liable for injury to the ward resulting from the wrongful conduct of a third party that provides medical or other care, treatment, or service to the ward, if the guardian exercised reasonable care in choosing the third party.
- (c) A guardian, without authorization of the court, may not revoke any health care directions set forth in any medical directive or health care power of attorney of which the ward is the principal. However, the appointment of a guardian automatically terminates the authority of any agent designated in the medical directive or health care power of attorney.
- (d) A guardian shall not initiate the commitment of a ward to a mental health-care institution except in accordance with the State's procedure for involuntary civil commitment.

EXHIBIT A