

Judge Guy Herman
Probate Court No. 1
200 W. 8th Street, 2nd Floor
Austin, TX 78701
(512) 854-9258



Judge Nicholas Chu
Probate Court No. 2
200 W. 8th Street, 4th Floor
Austin, TX 78701
(512) 854-5512

Travis County Probate Courts

Re: Health Care Providers Certificate of Medical Examination in Guardianship Matters

Dear Health Care Providers:

A Health Care Provider's Certificate of Medical Examination (HCPCME) is a required form needed by the Court to determine if an individual is incapacitated according to the legal definition and whether a guardian should be appointed to care for that individual. If the Court cannot obtain this form from the individual's physician, a guardianship cannot be ordered. We have seen an increasing number of routine, uncontested guardianships where families struggle to obtain an HCPCME, apparently because providers are hesitant to complete them. We hope that the information in this memo helps providers feel comfortable providing these forms in appropriate cases.

An "Incapacitated Person" is defined by the Texas Estates Code § 1002.017 as "*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.*" The HCPCME form asks a number of specific questions about the patient's ability to make responsible decisions in a variety of areas so that the Court can limit the guardianship, if needed, to maximize the patient's independence, and so that the parties can understand the provider's reasoning in making a conclusion about the patient's incapacity.

Most guardianships are not contested by the proposed ward/patient. In those cases, the HCPCME is reviewed by the parties and by the Court and admitted as an exhibit during the hearing with no testimony from the provider. **Even in cases where the guardianship is contested, it is unusual for the provider to be subpoenaed to testify.**

Things to Remember:

- The Health Care Provider must be (1) a physician currently licensed to practice in Texas; (2) a psychologist currently licensed in Texas or certified by HHSC; or (3) an advanced practice registered nurse acting under a Texas-licensed physician's authority and supervision. If the HCPCME is completed by a registered nurse, the supervising physician must also sign the HCPCME.
- If the HCPCME is completed by a psychologist, it generally cannot include physical/medical diagnoses (such as stroke or traumatic brain injury). If those diagnoses are a significant part of the clinical picture, a medical provider should complete the HCPCME.
- The Health Care Provider must fully complete the HCPCME and leave no blanks.
- Unless the HCPCME includes a determination of intellectual disability, it must be based on an examination conducted within 120 days of the date the application for guardianship is filed. Be sure to include the date of the patient's most recent examination.

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