

By: Naishtat

H.B. No. 889

A BILL TO BE ENTITLED

AN ACT

relating to examination requirements in certain guardianship matters concerning persons with mental retardation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 687, Texas Probate Code, is amended to read as follows:

Sec. 687. EXAMINATIONS AND REPORTS. (a) Except as provided by Subsection (c) of this section, the ~~[The]~~ court may not grant an application to create a guardianship for an incapacitated person, other than a minor~~[, person whose alleged incapacity is mental retardation,]~~ or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application and based on an examination the physician performed not earlier than the 120th day before the date of the filing of the application. The letter or certificate must:

(1) describe the nature, ~~[and]~~ degree, and severity of incapacity, including functional deficits, if any, regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

1 (D) make personal decisions regarding residence,
2 voting, and marriage; and

3 (E) consent to medical, dental, psychological,
4 or psychiatric treatment [~~the medical history if reasonably~~
5 ~~available~~];

6 (2) provide an evaluation of the proposed ward's
7 physical condition and mental function and summarize the proposed
8 ward's medical history if reasonably available [~~a medical prognosis~~
9 ~~specifying the estimated severity of the incapacity~~];

10 (3) state how or in what manner the proposed ward's
11 ability to make or communicate responsible decisions concerning
12 himself or herself is affected by the person's physical or mental
13 health, including the proposed ward's ability to:

14 (A) understand or communicate;

15 (B) recognize familiar objects and individuals;

16 (C) perform simple calculations;

17 (D) reason logically; and

18 (E) administer to daily life activities;

19 (4) state whether any current medication affects the
20 demeanor of the proposed ward or the proposed ward's ability to
21 participate fully in a court proceeding;

22 (5) if applicable, describe the precise physical and
23 mental conditions underlying a diagnosis of dementia, and state
24 whether the proposed ward:

25 (A) would benefit from placement in a facility
26 specializing in the care and treatment of individuals with
27 dementia;

1 (B) would benefit from medications appropriate
2 to the care and treatment of dementia; and

3 (C) has sufficient capacity to give informed
4 consent to the administration of medications for the treatment of
5 dementia [senility], if applicable;

6 (6) in providing a description under Subdivision (1)
7 of this subsection regarding the proposed ward's ability to operate
8 a motor vehicle and make personal decisions regarding voting, state
9 whether in the physician's opinion the proposed ward:

10 (A) has the mental capacity to vote in a public
11 election; and

12 (B) has the ability to safely operate a motor
13 vehicle; ~~and~~

14 (7) state whether the proposed ward has a
15 developmental disability and, if so, describe the nature of the
16 disability; and

17 (8) include any other information required by the
18 court.

19 (b) If ~~[Except as provided by Subsection (c) of this~~
20 ~~section, if]~~ the court determines it is necessary, the court may
21 appoint the necessary physicians to examine the proposed ward. The
22 court must make its determination with respect to the necessity for
23 a physician's examination of the proposed ward at a hearing held for
24 that purpose. Not later than the fourth day before the date of the
25 hearing, the applicant shall give to the proposed ward and the
26 proposed ward's attorney ad litem written notice specifying the
27 purpose and the date and time of the hearing. A physician who

1 examines the proposed ward, other than a physician or psychologist
2 who examines the proposed ward under Subsection (c)(2) [~~(e)~~] of
3 this section, shall make available to an attorney ad litem
4 appointed to represent the proposed ward, for inspection, a written
5 letter or certificate from the physician that complies with the
6 requirements of Subsection (a) of this section.

7 (c) If the basis of the proposed ward's alleged incapacity
8 is mental retardation, the court may not grant an application to
9 create a guardianship for the proposed ward unless the applicant
10 presents to the court:

11 (1) a written letter or certificate that complies with
12 Subsection (a) of this section; or

13 (2) both:

14 (A) [~~shall be examined by a physician or~~
15 ~~psychologist licensed in this state or certified by the Texas~~
16 ~~Department of Mental Health and Mental Retardation to perform the~~
17 ~~examination, unless there is]~~ written documentation showing [~~filed~~
18 with the court that shows] that, not earlier than 24 months before
19 the date of the hearing, the proposed ward has been examined by a
20 physician or psychologist licensed in this state or certified by
21 the Department of Aging and Disability Services to perform the
22 examination, in accordance with rules of the executive commissioner
23 of the Health and Human Services Commission governing examinations
24 of that kind; and

25 (B) the physician's or psychologist's [~~according~~
26 to the rules adopted by the Texas Department of Mental Health and
27 Mental Retardation not earlier than 24 months before the date of a

1 ~~hearing to appoint a guardian for the proposed ward. The physician~~
2 ~~or psychologist shall conduct the examination according to the~~
3 ~~rules adopted by the Texas Department of Mental Health and Mental~~
4 ~~Retardation and shall submit] written findings and recommendations~~
5 ~~[to the court].~~

6 SECTION 2. The changes in law made by this Act to Section
7 687, Texas Probate Code, apply only to an application for the
8 creation of a guardianship filed on or after the effective date of
9 this Act. An application for the creation of a guardianship filed
10 before the effective date of this Act is governed by the law in
11 effect on the date the application was filed, and the former law is
12 continued in effect for that purpose.

13 SECTION 3. This Act takes effect September 1, 2009.