

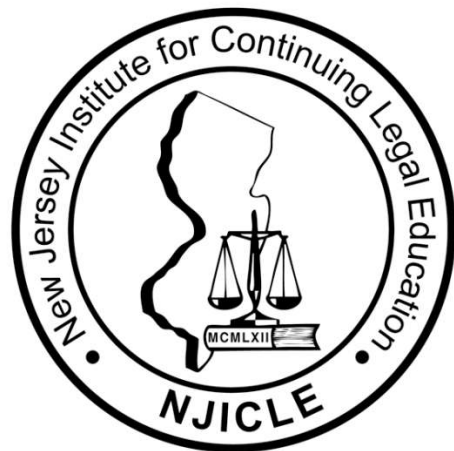
5th ANNUAL END OF LIFE CONFERENCE: LEGAL AND PRACTICAL ADVICE FOR ATTORNEYS, CAREGIVERS AND FAMILIES

2021 Seminar Material

M0312.21

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**5th ANNUAL END OF LIFE
CONFERENCE: LEGAL AND
PRACTICAL ADVICE FOR
ATTORNEYS, CAREGIVERS
AND FAMILIES**

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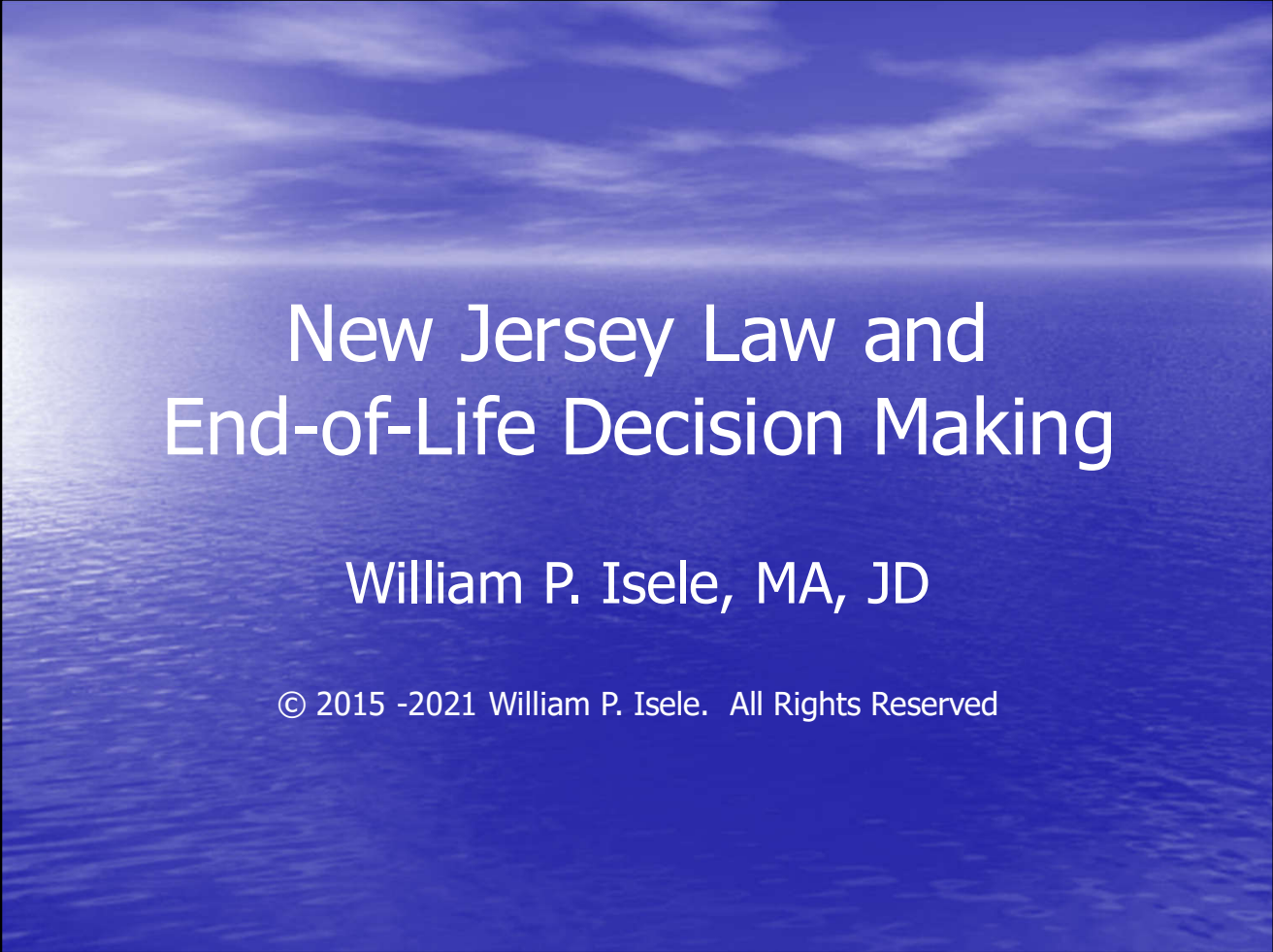


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New Jersey Law and End-of-Life Decision Making

William P. Isele, MA, JD

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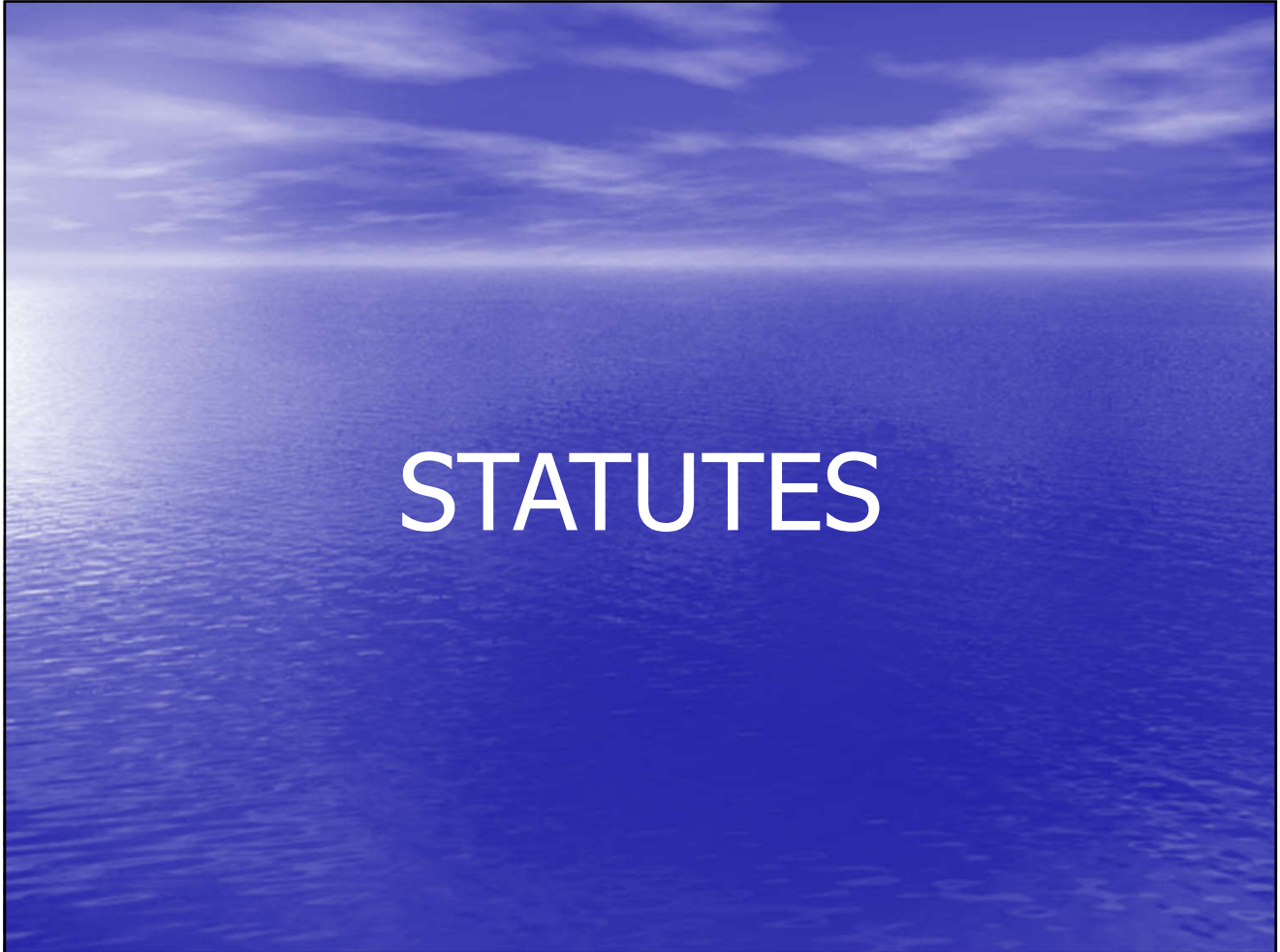
Do You Not Want Aggressive care at End of Life?

“Preventing unwanted aggressive care at the end of life requires **active communication** between provider and patient, and **effective strategies** to transfer information regarding preferences seamlessly across care venues.”

Garas N, Pantilat SZ, “Advance Planning For End-of-Life Care” in *Making Health Care Safer: A Critical Analysis of Patient Safety Practices*. Evidence Report/Technology Assessment: Number 43. Agency for Health Care Research and Quality Publication No. 01-E058, Rockville, MD, July 2001.

Do You Want Aggressive Care at the End of Life?

- Who knows it?
- What do they know?
- Will anyone listen to them?



NJ Advance Directives for Healthcare Act (1991)

- Three kinds:
 - Proxy Directive
 - Instruction Directive
 - Combined Directive
- Technical Requirements
 - **Must be in writing;**
 - **Must be signed by you;**
 - **Signature must be witnessed by two adult witnesses (over 18) or by a Notary**

NJ Advance Directives for Health Care Act (cont'd)

- Becomes effective:
 - When transmitted to your doctor, hospital or other health care provider;
 - When you lack the capacity to make a particular health care decision.
- Limitations on withholding or withdrawing:
 - If the treatment is experimental, ineffective or futile;
 - If you are permanently unconscious;
 - If you are in a terminal condition; or
 - If you have a serious irreversible condition and the burdens of treatment outweigh the benefits.

Practitioner Orders for Life Sustaining Treatment (2011)

- Gives more control to seriously ill patients or those who are medically frail with limited life expectancy, regardless of their age.
- Complements the Advance Directive.
- Is an actual Medical Order.
- Can be completed or amended by a Proxy.

Documentation on the POLST form includes:

- Goals of care
- Preferences regarding CPR attempts
- Preferences regarding use of intubation and mechanical ventilation
- Preferences for artificially administered nutrition and hydration
- Other specific preferences regarding medical interventions desired or declined.

Do Not Resuscitate Orders

- N.J.S.A. 26:2H-68
- Attending physician may issue a DNR, consistent with advance directive.
- DNR must be entered in writing in patient's medical record prior to implementation.
- MD may issue a DNR if patient has not executed an advance directive.

Healthcare Power of Attorney

- Powers of Attorney: N.J.S.A. 46:2B-8.1, et seq.
- Nothing in the statutory language specifically authorizes grant of a durable power of attorney to make medical decisions.
- Supreme Court: It should be interpreted that way. *Matter of Peter*, 108 N.J. 365, 378 (1987)

Advantages of a HCPOA over a Proxy Directive

- Decisions need not be limited to end-of-life and the four criteria.
- POA can be operative immediately, or without determination of capacity.
- The principal can limit the agent's authority.

Aid In Dying for the Terminally Ill (pending) A.1504, S.1072

- Would allow capable adults diagnosed with a terminal disease and deemed to have only six months to live to voluntarily obtain medication to terminate life.
- The diagnosis must be made by treating doctor and affirmed by a consulting physician.
- Patient must sign a form stating he/she is making this choice freely.
- Two witnesses attest the patient is capable of making the decision.

Observation

Many individuals live for several decades (often with chronic diseases) after the possibility of death becomes more than theoretical.

Donaldson M, Field, MJ. Measuring quality of care at the End of Life. *Arch Intern Med* 1998;158:121-28.



New Jersey Case Law

Matter of Quinlan, 70 N.J. 10 (1976)

- A person has a right to privacy, which includes the right to terminate life support.
- A guardian can remove life support if patient would not want to be sustained .
- Physician and ethics committee must verify patient's medical condition.

Matter of Conroy, 98 N.J. 321 (1985)

- Right of a terminally ill person to reject medical treatment respects individual's views re: preferred manner of concluding life.
- It is a matter of self-determination.
- Artificially induced nutrition and hydration are medical treatment.

Matter of Farrell, 108 N.J. 335 (1987)

- Right of competent, terminally ill adult, living at home, outweighed State interests:
 - Preserving life
 - Preventing suicide
 - Protecting innocent third parties
 - Integrity of medical profession

Matter of Jobes, 108 N.J. 394 (1987)

- Patient in an irreversible vegetative state.
- Right may be exercised by family or close friend.
- Two independent physicians must confirm patient's condition.
- Nursing home could not refuse to participate.

Matter of Peter, 108 N.J. 365 (1987)

- Conroy subjective test applies regardless of medical condition or life-expectancy.
- Designation of a surrogate decision maker must be respected.

Age is an issue of mind over matter. If you don't mind, it doesn't matter. *Mark Twain*

There is no pleasure worth forgoing just for an extra three years in the geriatric ward. *John Mortimer* (Creator of Rumpole of the Bailey)

How old would you be if you didn't know how old you were? *Satchel Paige*

Old age is fifteen years older than I am.
Oliver Wendell Holmes

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Crisis Standards of Care
A Systems Framework for Catastrophic
Disaster Response

Gregory J. Rokosz, DO, JD, FACEP

What are Crisis Standards of Care (CSC)?

- A substantial change in usual healthcare operations and the level of care it is possible to deliver which is made necessary by a pervasive (eg. pandemic) or catastrophic (eg. hurricane, earth quake) disaster

State of Emergency Declared

- Formal declaration for defined and sustained period (Executive Order)
- Civil and Criminal Immunity Important

CSC Emergency Issues Include:

- Severe shortages of equipment, supplies, and pharmaceuticals
- An insufficient number of qualified healthcare providers
- An overwhelming demand for services
- Allocation of scarce resources

CSC Mode:

- Focus shifts from the needs of individuals to needs of the overall community
- Not optional – a forced choice

Laws are the Cornerstone of the CSC Plan

- Determine what constitutes a public health emergency
- Create infrastructure through which we respond, prevent, and detect these emergencies
- Authorize the performance or non-performance of various different actions by a host of different actors
- Determine the extent of responsibility for harms that arise during emergencies
- Help describe medical / legal / crisis standards of care

Liability Issues

- Negligence
- Medical Malpractice
- Invasion of Privacy
- Discrimination
- Violations of Federal and State Laws

Relevant Statutory Provisions and Waivers

- Licensing / credentialing / reciprocity
- Mutual Aid Agreements / Emergency Management Assistance Compact
- Scope of practice
- Immunity (eg. volunteer, Good Samaritan, Federal & State Tort Claims Acts)
- Waivers of certain laws (eg. HIPPA, EMTALA, Conditions of Participation)
- Emergency Powers Acts
- Isolation and quarantine procedures
- FEMA



CSC Ethical Principles

Prevention

- Protect public from preventable causes of morbidity and mortality (i.e., protecting public health)

Stewardship

- Scarce resources must be managed during a PHE to prevent and minimize M&M among populations to the greatest extent possible while maintaining respect and care for individuals
- Duty to plan
- Clarity and specificity
- Qualified personnel / decision makers

Transparency

Planning and policy decisions and rationale should be open and subject to public consultation and input

- Openness
- Availability of plans
- Public Engagement
- Communications

Soundness

Decisions and responses in public health emergencies should be consistent with known or empirically supported “best practices”

- Effectiveness
- Non-diversion
- Information
- Risk Assessment
- Flexibility

Duty to Care

Healthcare providers and practitioners have a duty to provide care during a PHE

- Duty not to abandon
- Duty to care despite risks
- Full disclosure
- Duty to provide comfort care

Reciprocity

Healthcare practitioners who face disproportionate risks or burdens for the benefit of the community in a PHE are entitled to receive additional support

- Protections for personnel / priority status
- Protections for healthcare entities

Fairness

In a PHE, similarly-situated individuals and groups should be treated alike

- Consistency
- Medical need and prognosis
- Justice
- Privacy

Proportionality

Less restrictive means should be used whenever possible during a PHE, reserving restrictive measures only for when they are necessary to effective responses

- Balancing obligations
- Selection
- Application – volunteerism first before mandates
- Duration
- Well-targeted

Accountability

Decision-makers are responsible for their actions (or failures to act) in a PHE

- Duty to evaluate
- Public accountability
- Documentation

Solidarity

Coordination over competition

Share openly and act uniformly across jurisdictions (states, communities, hospitals)

Vulnerability

Who is most vulnerable to the condition
(eg. – Cipro and postal workers)

What factors should / could be considered in
allocating a scarce resource?
(commodity scarcity)

- Age of patient? Fair innings principle
- Healthcare practitioners? Other hospital workers?
- First providers? Police? Firefighters?
- First come first serve?
- Most sick (most in need)?
- Most likely to benefit?
- Greatest good for the greatest number in society?
- Saving the most lives/life years?

- Most beneficial to society? Retrospective / prospective?
Value of life?
- VIPs
- Randomization?
- Ability to pay?
- Pregnant women?
- Prisoners?
- Undocumented immigrants?
- Those non-compliant with their own healthcare needs (eg. alcoholics, smokers, obesity, medication non-compliance)
- Disabled population? Nursing home population?
- Quality of life?

Bioethical Principles Possibly at Play

Do no harm

Autonomy

Beneficence

Justice – distributive and procedural

Population based public health ethic principles

Crisis Standards of Care Policies (eg. New York State, Univ. of Pittsburgh, New Jersey)

Application examples – ventilators, Remdesivir, vaccines

CPR scenario

Class exercise

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About the Panelists...

Margaret J. Davino is a Partner in Fox Rothschild LLP with offices in Princeton, New Jersey, and New York City. For more than 20 years she has handled a broad spectrum of healthcare matters, including transactional, compliance, contractual, corporate, regulatory, governance, managed care/payer and risk management issues. Her clients include hospitals, physicians and physician groups, start-up companies, FQHCs, home care agencies, ACOs, pharmacies, laboratories, agencies for the developmentally-disabled, care management companies, billing companies, nonprofit companies, healthcare IT vendors and other providers and entities in the healthcare field.

Admitted to practice in New Jersey, New York and Connecticut, Ms. Davino has been Chair of the Providers and In-House Counsel Committee of the New York State Bar Association Health Law Section, is Past Chair of the New Jersey State Bar Association Health and Hospital Law Section and has been a member of the American Health Lawyers Association (AHLA). She has sat on the boards of a number of organizations, including Women in Health Management and Lifespire, and is a former member of the Board of Directors of the New Jersey Hospice & Palliative Care Organization.

Ms. Davino has lectured on multiple healthcare legal topics and has written articles and a book chapter in *Managed Care – Survival Strategies* on the legal issues associated with managed care. Also a registered nurse, she wrote a column on HIPAA issues for two years for the publication *Medical Economics*.

Ms. Davino received her B.S.N., with honors, from the University of Michigan, her J.D. from Vanderbilt University School of Law and her M.B.A. in Finance, *magna cum laude*, from Seton Hall University.

Aline M. Holmes, DNP, RN is a Clinical Associate Professor of Nursing at Rutgers University School of Nursing in Newark, New Jersey. She was formerly Senior Vice President, Clinical Affairs, for the New Jersey Hospital Association (NJHA). She was also Director of the NJHA Institute for Quality and Patient Safety and Director of the NJHA Hospital Engagement Network (now Hospital Improvement Network), and prior to that worked as a nursing/hospital administrator in hospitals in Washington, D.C., and Chicago before moving to New Jersey.

Licensed as a Registered Nurse in New Jersey, Dr. Holmes has been Co-Chair of New Jersey's Crisis of Care Committee and the New Jersey Commissioner of Health's Quality Improvement Advisory Council, and is a past President and Board Member of the American Organization of Nurse Executives. She has been a member of the American and New Jersey State Nurses Associations, the Emergency Nurses Association, the Society of Critical Care Medicine, the American Health Quality Association, the Healthcare Quality Professionals of New Jersey and several other organizations. Dr. Holmes has served on the Board of Trustees and several committees of the Visiting Nurse Association Health Group as well as the Bioethics Committee of the Medical Society of New Jersey. While at the NJHA, she led the task force to develop the POLST program in New Jersey and over the past years she has worked to develop resources on advanced care planning and to continually monitor changes to the POLST form.

Project Director of *Improving Knowledge and Competencies Around Caring for Patients With Ebola* funded by the Robert Wood Johnson Foundation, Ms. Holmes has been involved with several other research projects and is the author and co-author of articles which have appeared in *Nursing Management* and other professional publications. She has lectured locally and nationally to professional organizations and has been a student mentor and instructor at several colleges and universities. She is the recipient of several honors, including the Living Legend Award bestowed by NJSNA/Institute for Nursing and the Organization of NJ Nurse Executives.

Ms. Holmes received her BSN from the University of Massachusetts and her MSN from Catholic University of America. She did postgraduate work at Northwestern University's J.L. Kellogg School of Management and received her DNP from Rutgers University School of Nursing. She served in the United States Navy Nurse Corps during the Vietnam War.

William P. Isele is Of Counsel to Archer & Greiner, P.C., in the firm's Princeton, New Jersey, office. Concentrating his practice in health care and elder law, he has experience in dealing with matters of bio-medical ethics, including end-of-life decision-making and issues relating to palliative care. He offers advice and counsel to health care providers on licensing and regulatory matters, as well as compliance and business/practice matters.

Mr. Isele served as New Jersey's Ombudsman for the Institutionalized Elderly from October 1999 to October 2007 and was also a member of the Health Law Division in the Office of General Counsel of the American Medical Association in Chicago. As Chair of the Health & Hospital Law Section of the New Jersey State Bar Association, he was instrumental in advocating for the passage of the *New Jersey Advance Directives for Health Care Act* and the *New Jersey Definition of Death Act*. Past Chair of the NJSBA Elder & Disability Law Section, Mr. Isele is also Past President of the Middlesex County Bar Association and Foundation, and has served on the Boards of Central Jersey Legal Services and Leading Age New Jersey. He was a member of the American Health Lawyers Association's Alternative Dispute Resolution Service from 1992 to 2001, and has been a member of the Boards of Trustees of the New Jersey Hospice and Palliative Care Organization and the Princeton Senior Resource Center, where he is a past President.

A former adjunct professor in the evening division of Seton Hall University School of Law, Mr. Isele has been an Adjunct Professor of Law and Ethics at DeVry University and an adjunct lecturer on Health and Aging at the Rutgers University School of Social Work. His articles have appeared in the *New Jersey Law Journal*, *New Jersey Lawyer* and other professional publications, and he is the recipient of several honors, including the NJ Hospice and Palliative Care Organization's Spirit of Hospice Award and the NJSBA Health Law Section's Distinguished Service Award.

Mr. Isele received his B.A. and M.A. in Philosophy, with a concentration in Ethics, from the Catholic University of America. He received his J.D. from Georgetown University Law Center and holds a Certificate in Gerontology from Rutgers University School of Social Work.

Gregory J. Rokosz, DO, J.D., FACEP, FACOEP is Senior Vice President for Medical and Academic Affairs/Chief Medical Officer at Saint Barnabas Medical Center in Livingston, New Jersey. An Emergency Physician, medical educator, medical administrator and health law attorney, he is Board Certified in both Emergency Medicine and Family Medicine, and a Fellow

of the American College of Emergency Physicians and the American College of Osteopathic Emergency Physicians.

Dr. Rokosz is a past President of the Medical Staff at Union Hospital in New Jersey, where he was also the Vice President for Medical Affairs and Director of Medical Education. He has served as Vice President for Medical Education and Clinical Research for the Barnabas Health System in New Jersey and has chaired the Institutional Review Board at Saint Barnabas Medical Center. Dr. Rokosz was a member of the New Jersey State Board of Medical Examiners for more than eleven years and one of its Presidents. He was nominated by the Federation of State Medical Boards and served on the Accreditation Review Committee of the Accreditation Council for Continuing Medical Education (ACCME), a committee he also chaired. Dr. Rokosz has chaired the Physician Executive Constituency Group at the New Jersey Hospital Association and has been a member of the Impairment Review Committee of the State's Alternative Resolution Program. He has been a member of numerous organizations, including the American Osteopathic Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the American College of Emergency Physicians, and the Health and Hospital Law Sections of the American and New Jersey State Bar Associations. Dr. Rokosz has also been a member and Chair of the New Jersey Hospital Association Physician Executive Constituency Group. He is a Fellow and a member of the inaugural class of the New Jersey Healthcare Executive Leadership Academy, and was appointed to, and served as Vice-Chair for, the New Jersey End-of-Life Advisory Commission. He is also Chair of the Board of Directors of Goals of Care Coalition of New Jersey, a non-profit dedicated to improving end-of-life care in our state.

Dr. Rokosz has been an Associate Clinical Professor of Emergency Medicine and Assistant Clinical Dean at the New York College of Osteopathic Medicine and has served as Vice Chair of the Board of the New York Colleges of Osteopathic Medicine Educational Consortium and as Associate Dean at Mount Sinai School of Medicine for the Barnabas Health System. He has also been an Associate Professor and a Director of Medical Education at St. George's University School of Medicine. He is listed in several *Who's Who* publications, has contributed articles to a number of professional journals and is the recipient of several honors.

Dr. Rokosz received his B.A. with honors, from Rutgers College, Rutgers University. He received his medical degree from Des Moines University College of Osteopathic Medicine and Surgery, and his J.D., *magna cum laude*, with a concentration in health law, from Seton Hall University School of Law, where he was a member of the *Law Review* and the recipient of the Advanced Legal Writing Award.

Edward H. Tetelman, a mediator, arbitrator, and legal consultant in Titusville, New Jersey, is the former Assistant Commissioner of the New Jersey Department of Human Services and the former New Jersey Public Guardian for Elderly Adults. He concentrates his practice in health care, elder law and public interest law.

Mr. Tetelman is admitted to practice in New Jersey, Ohio, and Washington, D.C. He is a member of the New Jersey State Bar Association.

Mr. Tetelman received his B.A. from Allegheny College and his J.D. from Case Western Reserve University.

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RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY

RULE 4:86. ACTION FOR GUARDIANSHIP OF AN INCAPACITATED PERSON OR FOR THE APPOINTMENT OF A CONSERVATOR

4:86-1. Action; Records; Guardianship Monitoring Program

(a) Every action for the determination of incapacity of a person and for the appointment of a guardian of that person or of the person's estate or both, other than an action with respect to a veteran under N.J.S.A. 3B:13-1 et seq., or with respect to a kinship legal guardianship under N.J.S.A. 3B:12A-1 et seq., shall be brought pursuant to R. 4:86-1 through R. 4:86-8 for appointment of a general, limited or pendente lite temporary guardian.

(b) Judiciary records of all actions set forth in R. 4:86-1(a) shall be maintained by the Surrogate and shall be accessible pursuant to R. 1:38-3(e).

(c) Each vicinage shall operate a Guardianship Monitoring Program through the collaboration of the Superior Court, Chancery Division, Probate Part; the County Surrogates; and the Administrative Office of the Courts, Civil Practice Division.

(1) The functions of guardianship support and monitoring shall be established by the Administrative Director of the Courts. Such functions shall include guardianship training and review of inventories and periodic reports of financial accounting filed by guardians as required by R. 4:86-6(e).

(2) Post-adjudicated case issues identified through monitoring may be forwarded for further action by the Superior Court, Chancery Division, Probate Part and/or the Administrative Office of the Courts.

(3) Case monitoring issues referred to the attention of the Superior Court, Chancery Division, Probate Part shall be promptly reviewed and such further action taken as deemed appropriate in the discretion of the court.

(4) Quasi-judicial immunity shall be extended to Judiciary staff, County Surrogates, County Surrogate staff, and volunteers performing monitoring responsibilities in the Guardianship Monitoring Program.

Note: Source — R.R. 4:102-1. Amended July 22, 1983 to be effective September 12, 1983; former R. 4:83-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; R. 4:86 caption amended, and text of R. 4:86-1 amended July 12, 2002 to be effective September 3, 2002; caption to Rule 4:86 amended, and text of Rule 4:86-1 amended July 9, 2008 to be effective September 1, 2008; caption amended, former text amended and designated as paragraph (a), and new paragraphs (b) and (c) added August 1, 2016 to be effective September 1, 2016.

4:86-2. Complaint; Accompanying Documents; Alternative Affidavits or Certifications

(a) Complaint. The allegations of the complaint shall be verified as prescribed by R. 1:4-7. The complaint shall state:

(1) the name, age, domicile and address of the plaintiff, of the alleged incapacitated person and of the alleged incapacitated person's spouse, if any;

(2) the plaintiff's relationship to the alleged incapacitated person;

(3) the plaintiff's interest in the action;

(4) the names, addresses and ages of the alleged incapacitated person's children, if any, and the names and addresses of the alleged incapacitated person's parents and nearest of kin, meaning at a minimum all persons of the same degree of relationship to the alleged incapacitated person as the plaintiff;

(5) the name and address of the person or institution having the care and custody of the alleged incapacitated person;

(6) if the alleged incapacitated person has lived in an institution, the period or periods of time the alleged incapacitated person has lived therein, the date of the commitment or confinement, and by what authority committed or confined; and

(7) the name and address of any person named as attorney-in-fact in any power of attorney executed by the alleged incapacitated person, any person named as health care representative in any health care directive executed by the alleged incapacitated person, and any person acting as trustee under a trust for the benefit of the alleged incapacitated person.

(b) Accompanying Documents. The complaint shall have annexed thereto:

(1) An affidavit or certification stating the nature, description, and fair market value of the following, in such form as promulgated by the Administrative Director of the Courts:

(A) all real estate in which the alleged incapacitated person has or may have a present or future interest, stating the interest, describing the real estate fully and stating the assessed valuation thereof;

(B) all the personal estate which he or she is, will or may in all probability become entitled to, including stocks, bonds, mutual funds, securities and investment accounts; money on hand, annuities, checking and savings accounts and certificates of deposit in banks and notes or other indebtedness due the alleged incapacitated person; pensions and retirement accounts, including annuities and profit

sharing plans; miscellaneous personal property; and the nature and total monthly amount of any income which may be payable to the alleged incapacitated person; and

(C) the encumbrance amount of any debt including any secured associated debt related to the real estate or personal estate of the alleged incapacitated person;

(2) Affidavits or certifications of two physicians having qualifications set forth in N.J.S.A. 30:4-27.2t, or the affidavit or certification of one such physician and one licensed practicing psychologist as defined in N.J.S.A. 45:14B-2, in such form as promulgated by the Administrative Director of the Courts. Pursuant to N.J.S.A. 3B:12-24.1(d), the affidavits or certifications may make disclosures about the alleged incapacitated person. If an alleged incapacitated person has been committed to a public institution and is confined therein, one of the affidavits or certifications shall be that of the chief executive officer, the medical director, or the chief of service providing that person is also the physician with overall responsibility for the professional program of care and treatment in the administrative unit of the institution. However, where an alleged incapacitated person is domiciled within this State but resident elsewhere, the affidavits or certifications required by this rule may be those of persons who are residents of the state or jurisdiction of the alleged incapacitated person's residence. Each affiant shall have made a personal examination of the alleged incapacitated person not more than 30 days prior to the filing of the complaint, but said time period may be relaxed by the court on an ex parte showing of good cause. To support the complaint, each affiant shall state:

(A) the date and place of the examination;

(B) whether the affiant has treated or merely examined the alleged incapacitated individual;

(C) whether the affiant is disqualified under R. 4:86-3;

(D) the diagnosis and prognosis and factual basis therefor;

(E) for purposes of ensuring that the alleged incapacitated person is the same individual who was examined, a physical description of the person examined, including but not limited to sex, age and weight;

(F) the affiant's opinion of the extent to which the alleged incapacitated person is unfit and unable to govern himself or herself and to manage his or her affairs and shall set forth with particularity the circumstances and conduct of the alleged incapacitated person upon which this opinion is based, including a history of the alleged incapacitated person's condition;

(G) if applicable, the extent to which the alleged incapacitated person retains sufficient capacity to retain the right to manage specific areas, such as residential, educational, medical, legal, vocational or financial decisions; and

(H) an opinion on whether the alleged incapacitated person is capable of attending or otherwise participating in the hearing and, if not, the reasons for the individual's inability; and

(3) A Case Information Statement in such form as promulgated by the Administrative Director of the Courts. Said Case Information Statement shall include the date of birth and Social Security number of the alleged incapacitated person.

(c) Alternative Affidavits or Certifications.

(1) If the plaintiff cannot secure the information required in paragraph (b)(1), the complaint shall so state and give the reasons therefor, and the affidavit or certification submitted shall in that case contain as much information as can be secured in the exercise of reasonable diligence.

(2) In lieu of the affidavits or certifications provided for in paragraph (b)(2), an affidavit or certification of one affiant having the qualifications as required therein shall be submitted, stating that he or she has endeavored to make a personal examination of the alleged incapacitated person not more than 30 days prior to the filing of the complaint but that the alleged incapacitated person or those in charge of him or her have refused or are unwilling to have the affiant make such an examination. The time period herein prescribed may be relaxed by the court on an ex parte showing of good cause.

Note: Source — R.R. 4:102-2; former R. 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 9, 2008 to be effective September 1, 2008; caption amended, and paragraphs (a), (b) and (c) amended and captions added August 1, 2016 to be effective September 1, 2016.

4:86-3. Disqualification of Affiant

No affidavit or certification shall be submitted by a physician or psychologist who is related, either through blood or marriage, to the alleged incapacitated person or to a proprietor, director or chief executive officer of any institution (except state, county or federal institutions) for the care and treatment of the ill in which the alleged incapacitated person is living, or in which it is proposed to place him or her, or who is professionally employed by the management thereof as a resident physician or psychologist, or who is financially interested therein.

Note: Source — R.R. 4:102-3; former R. 4:83-3 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 28, 2004 to be effective September 1, 2004; amended July 9, 2008 to be effective September 1, 2008; amended August 1, 2016 to be effective September 1, 2016.

4:86-3A. Action on Complaint

(a) Review of Complaint Prior to Docketing. Prior to docketing, the Surrogate shall review the complaint to ensure that proper venue is laid and that it contains all information required by R. 4:86-2.

(b) Docketing.

(1) Upon the filing of a complaint for the determination of incapacity of a person and for the appointment of a guardian, if it appears that there is jurisdiction and that the complaint is substantially complete in all respects, the complaint shall be docketed.

(2) If, after docketing, there is a lack of jurisdiction, the court shall dismiss the complaint forthwith. If a complaint is not substantially complete in all respects, the Surrogate shall process the complaint in accordance with R. 1:5-6.

(c) Availability of Guardianship File. The Surrogate shall make the complete guardianship file available to the court upon request.

Note: Adopted August 1, 2016 to be effective September 1, 2016.

4:86-4. Order for Hearing

(a) Contents of Order.

(1) If the court is satisfied with the sufficiency of the complaint and supporting affidavits and that further proceedings should be taken thereon, it shall enter an order fixing a date for hearing.

(2) The order shall require that at least 20 days' notice thereof be given to the alleged incapacitated person, any person named as attorney-in-fact in any power of attorney executed by the alleged incapacitated person, any person named as health care representative in any health care directive executed by the alleged incapacitated person, and any person acting as trustee under a trust for the benefit of the alleged incapacitated person, the alleged incapacitated person's spouse, children 18 years of age or over, parents, the person having custody of the alleged incapacitated person, the attorney appointed pursuant to R. 4:86-4(b), and such other persons as the court directs. Notice shall be effected by service of a copy of the order, complaint and

supporting affidavits upon the alleged incapacitated person personally and upon each of the other persons in such manner as the court directs.

(3) The order for hearing shall expressly provide that appointed counsel for the alleged incapacitated person is authorized to seek and obtain medical and psychiatric information from all health care providers.

(4) The court may allow shorter notice or waive notice upon a showing of good cause. In such case, the order shall recite the basis for shortening or waiving notice, and proof shall be submitted at the hearing that such basis continues to exist.

(5) A separate notice shall be personally served on the alleged incapacitated person stating that if he or she desires to oppose the action, he or she may appear either in person or by attorney, and may demand a trial by jury.

(6) The order for hearing shall require that any proposed guardian complete guardianship training as promulgated by the Administrative Director of the Courts; however, agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this requirement.

(7) If the alleged incapacitated person is not represented by counsel, the order shall include the appointment by the court of counsel for the alleged incapacitated person.

(b) Duties of Counsel.

(1) Counsel shall (i) personally interview the alleged incapacitated person; (ii) make inquiry of persons having knowledge of the alleged incapacitated person's circumstances, his or her physical and mental state and his or her property; (iii) make reasonable inquiry to locate any will, powers of attorney, or health care directives previously executed by the alleged incapacitated person or to discover any interests the alleged incapacitated person may have as beneficiary of a will or trust.

(2) At least ten days prior to the hearing date, counsel shall file a report with the court and serve a copy thereof on plaintiff's attorney and other parties who have formally appeared in the matter. The report shall include the following: (i) the information developed by counsel's inquiry; (ii) recommendations concerning the court's determination on the issue of incapacity; (iii) any recommendations concerning the suitability of less restrictive alternatives such as a conservatorship or a delineation of those areas of decision making that the alleged incapacitated person may be capable of exercising; (iv) whether a case plan for the incapacitated person should thereafter be submitted to the court; (v) whether the alleged incapacitated person has expressed dispositional preferences and, if so, counsel shall argue for their inclusion in the

judgment of the court; and (vi) recommendations concerning whether good cause exists for the court to order that any power of attorney, health care directive, or revocable trust created by the alleged incapacitated person be revoked or the authority of the person or persons acting thereunder be modified or restricted.

(3) If the alleged incapacitated person obtains other counsel, such counsel shall notify the court and appointed counsel at least ten days prior to the hearing date.

(c) Examination. If the affidavit or certification supporting the complaint is made pursuant to R. 4:86-2(c), the court may, on motion and upon notice to all persons entitled to notice of the hearing under paragraph (a), order the alleged incapacitated person to submit to an examination. The motion shall set forth the names and addresses of the physicians who will conduct the examination, and the order shall specify the time, place and conditions of the examination. Upon request, the report thereof shall be furnished to either the examined party or his or her attorney.

(d) Guardian Ad Litem. At any time prior to entry of judgment, where special circumstances come to the attention of the court by formal motion or otherwise, a guardian ad litem may, in addition to counsel, be appointed to evaluate the best interests of the alleged incapacitated person and to present that evaluation to the court.

(e) Compensation. The compensation of the attorney for the party seeking guardianship, appointed counsel, and of the guardian ad litem, if any, may be fixed by the court to be paid out of the estate of the alleged incapacitated person or in such other manner as the court shall direct.

Note: Source — R.R. 4:102-4(a) (b). Paragraph (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; caption of former R. 4:83-4 amended, caption and text of paragraph (a) amended and in part redesignated as paragraph (b) and former paragraph (b) redesignated as paragraph (c) and amended, and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended and paragraphs (d) and (e) added June 28, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), (d), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (e) amended July 27, 2006 to be effective September 1, 2006; paragraphs (a), (b),(c),(d) and (e) amended July 9, 2008 to be effective September 1, 2008; paragraph (a) amended, subparagraphs enumerated and paragraphs (a)(6) and (a)(7) adopted, paragraph (b) amended and subparagraphs enumerated, and paragraph (c) amended August 1, 2016 to be effective September 1, 2016.

4:86-5. Proof of Service; Appearance of Alleged Incapacitated Person at Hearing; Answer

(a) Not later than ten days prior to the hearing, the plaintiff shall file proof of service of the notice, order for hearing, complaint and affidavits or certifications and proof by affidavit that the alleged incapacitated person has been afforded the opportunity to appear personally or by attorney, and that he or she has been given or offered assistance to communicate with friends, relatives or attorneys.

(b) Prior to the hearing, unless good cause shown, but no later than prior to qualification, any proposed guardian must complete guardianship training as promulgated by the Administrative Director of the Courts. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S. 30:1-7 shall be exempt from this requirement.

(c) The plaintiff or appointed counsel shall produce the alleged incapacitated person at the hearing, unless the plaintiff and the court-appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

(d) If the alleged incapacitated person or any person receiving notice of the hearing intends to appear by an attorney, such person shall, not later than ten days before the hearing, serve and file an answer, affidavit, or motion in response to the complaint.

Note: Source — R.R. 4:102-5; caption and text of former R. 4:83-5 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; text amended and designated as paragraph (a) and new paragraphs (b), (c), and (d) added August 1, 2016 to be effective September 1, 2016.

4:86-6. Hearing; Judgment

(a) Trial. Unless a trial by jury is demanded by or on behalf of the alleged incapacitated person, or is ordered by the court, the court shall, after taking testimony in open court, determine the issue of incapacity. The court, with the consent of counsel for the alleged incapacitated person, may take the testimony of a person who has filed an affidavit or certification pursuant to R. 4:86-2(b) by telephone or may dispense with oral testimony and rely on the affidavits or certifications submitted. Telephone testimony shall be recorded verbatim.

(b) Motion for New Trial. A motion for a new trial shall be served not later than 30 days after the entry of the judgment.

(c) Appointment of General or Limited Guardian. If a general or limited guardian of the person or of the estate or of both the person and estate is to be appointed, the court shall appoint and letters shall be granted to any of the following:

(1) the incapacitated person's spouse, if the spouse was living with the incapacitated person as husband or wife at the time the incapacity arose;

(2) the incapacitated person's next of kin; or

(3) the Office of the Public Guardian for Elderly Adults within the statutory mandate of that office. If none of them will accept the appointment, or if the court is satisfied that no appointment from among them will be in the best interests of the incapacitated person or estate, then the court shall appoint and letters shall be granted to such other person who will accept appointment as the court determines is in the best interests of the incapacitated person. Such persons may include registered professional guardians or surrogate decision-makers chosen by the incapacitated person before incapacity by way of a durable power of attorney, health care proxy, or advance directive.

(d) Judgment.

(1) The judgment of legal incapacity and appointment of guardian shall be in such form and include all such provisions as promulgated by the Administrative Director of the Courts, except to the extent that the court explicitly directs otherwise.

(2) Unless expressly waived therein, the judgment appointing the guardian shall fix the amount of the bond. If there are extraordinary reasons justifying the waiver of a bond, that determination shall be set forth in a decision supported by appropriate factual findings.

(3) A proposed judgment of legal incapacity and appointment of guardian shall be filed with the Surrogate not later than ten days prior to the hearing.

(e) Duties of Guardian.

(1) Not later than 30 days after entry of the judgment of legal incapacity and appointment of guardian, the guardian shall qualify and accept the appointment in accordance with R. 4:96-1. The acceptance of appointment shall include an acknowledgment that the guardian has completed guardianship training as promulgated by the Administrative Director of the Courts in accordance with R. 4:86-5(b).

(2) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate, and serve on all interested parties, within 90 days of appointment an inventory in such form as promulgated by the Administrative Director of the Courts specifying all property and income of the incapacitated person's estate.

(3) Unless expressly waived in the judgment, the guardian of the estate shall file with the Surrogate reports of the financial accounting of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(4) Unless expressly waived in the judgment, the guardian of the person shall file with the Surrogate reports of the well-being of the incapacitated person as required by N.J.S.A. 3B:12-42 and in such form as promulgated by the Administrative Director of the Courts. The report shall be filed annually unless otherwise specified in the judgment.

(5) The judgment shall also require the guardian to keep the Surrogate reasonably advised of the whereabouts and telephone number of the guardian and of the incapacitated person, and to advise the Surrogate within 30 days of the incapacitated person's death or of any major change in his or her status or health. As to the incapacitated person's death, the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

(6) A guardian shall cooperate fully with any Court or Surrogate staff or volunteers until the guardianship is terminated by the death or return to capacity of the incapacitated person, or the guardian's death, removal or discharge.

(7) The guardian shall monitor the capacity of the incapacitated person over time and take such steps as are necessary to protect the interests of the incapacitated person, including but not limited to initiating an action for return to capacity as provided in N.J.S.A. 3B:12-28.

(f) Duties of Surrogate.

(1) The Surrogate shall provide the entire complete guardianship file to the court for review no later than seven days before the hearing.

(2) At the time of qualification and issuance of letters of guardianship, the Surrogate shall review the acceptance of appointment and letters of guardianship with the guardian in such form as promulgated by the Administrative Director of the Courts.

(3) The Surrogate shall issue letters of guardianship following the guardian's qualification. The Surrogate shall record issuance of all letters of guardianship. Letters of guardianship shall accurately reflect the provisions of the judgment.

(4) The Surrogate shall record receipt of all inventories, reports of financial accounting, and reports of well-being filed pursuant to paragraphs (e)(3) thru (e)(5) above.

(5) The Surrogate shall notify the court, and shall issue notices to the guardian in such form as promulgated by the Administrative Director of the Courts, in the event that:

(A) the guardian fails to qualify and accept the appointment within 30 days after entry of the judgment of legal incapacity and appointment of guardian in accordance with paragraph (e)(1) above; or

(B) the guardian fails to timely file inventories, reports of financial accounting, and/or reports of well-being filed in accordance with paragraphs (e)(3) thru (e)(5) above.

(6) The Surrogate shall immediately notify the court if they are informed through oral or written communication, or become aware by other means, of emergent allegations of substantial harm to the physical or mental health, safety and well-being, and/or the property or business affairs, of an alleged or adjudicated incapacitated person. However, the Surrogate shall have no obligation to review inventories, periodic reports of well-being, informal accountings, or other documents filed by guardians, except for formal accountings subject to audit by the Surrogate.

(7) The Surrogate shall record the death of the incapacitated person.

Note: Source — R.R. 4:102-6(a) (b) (c), 4:103-3 (second sentence). Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (c) of former R. 4:83-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, text of paragraph (c) redesignated as paragraphs (c) and (d) and amended, paragraph (c) caption amended, and paragraph (d) caption adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a) and (c) amended, new paragraph (d) added, former paragraph (d) amended and redesignated as paragraph (e), and new paragraph (f) added August 1, 2016 to be effective September 1, 2016; by order dated August 25, 2016 effective date of paragraph (f)(5) extended to March 1, 2017.

4:86-7. Rights of an Incapacitated Person; Proceedings for Review of Guardianship

(a) An individual subject to a general or limited guardianship shall retain:

(1) The right to be treated with dignity and respect;

(2) The right to privacy;

(3) The right to equal treatment under the law;

(4) The right to have personal information kept confidential;

(5) The right to communicate privately with an attorney or other advocate;

(6) The right to petition the court to modify or terminate the guardianship, including the right to meet privately with an attorney or other advocate to assist with this

legal procedure, as well as the right to petition for access to funds to cover legal fees and costs; and

(7) The right to request the court to review the guardian's actions, request removal and replacement of the guardian, and/or request that the court restore rights as provided in N.J.S.A. 3B:12-28.

(b) An incapacitated person, or an interested person on his or her behalf, may seek a return to full or partial capacity by commencing a separate summary action by verified complaint. The complaint shall be supported by affidavits or certifications as described in Rule 4:86-2(b)(2), and shall set forth facts evidencing that the previously incapacitated person no longer is incapacitated or has returned to partial capacity. The court shall, on notice to the persons who would be set forth in a complaint filed pursuant to Rule 4:86-1, set a date for hearing and take oral testimony in open court with or without a jury. The court may render judgment that the person no longer is fully or partially incapacitated, that his or her guardianship be modified or discharged subject to the duty to account, and that his or her person and estate be restored to his or her control, or may render judgment that the guardianship be modified but not terminated.

(c) An incapacitated person, or an interested person on his or her behalf, may seek review of a guardian's conduct and/or review of a guardianship by filing a motion setting forth the basis for the relief requested.

Note: Source — R.R. 4:102-7; former R. 4:83-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008; caption and text of former rule deleted, new caption adopted, new paragraphs (a), (b) and (c) adopted August 1, 2016 to be effective September 1, 2016.

4:86-7A. Application for Financial Maintenance for Incapacitated Adults Subject to Prior Chancery Division, Family Part Order

As to a person alleged or adjudicated to be incapacitated as defined in N.J.S.A. 3B:1-2 and who has reached the age of 23, an application for conversion of a child support obligation to another form of financial maintenance pursuant to N.J.S.A. 2A:17-56.67 et seq. may be made as follows:

(a) Prior to Adjudication of Incapacity. A plaintiff filing a complaint for adjudication of incapacity and appointment of guardian pursuant to R. 4:86-2 may request such conversion in a separate count of the complaint.

(b) After Adjudication of Incapacity. A guardian or custodial parent of an adjudicated incapacitated person may request such conversion by filing a motion on notice to the parent responsible for paying child support and any interested parties setting forth the basis for the relief requested pursuant to R. 4:86-7.

(c) Required Materials for Submission. Any action brought pursuant to either paragraph (a) or paragraph (b) shall set forth the exceptional circumstances pursuant to which such conversion to another form of financial maintenance is requested and shall have the following annexed thereto:

(1) Copies of any prior Chancery Division, Family Part orders related to the child support obligation; and

(2) A financial maintenance statement in such form as promulgated by the Administrative Director of the Courts.

Note: Adopted July 27, 2018 to be effective September 1, 2018.

4:86-8. Appointment of Guardian for Nonresident Incapacitated Person

An action for the appointment of a guardian for a nonresident who has been or shall be found to be an incapacitated person under the laws of the state or jurisdiction in which the incapacitated person resides shall be brought in the Superior Court pursuant to R. 4:67. The plaintiff shall exhibit and file with the court an exemplified copy of the proceedings or other evidence establishing the finding. If the plaintiff is the duly appointed guardian, trustee or committee of the incapacitated person in the state or jurisdiction in which the finding was made, and applies to be appointed guardian in this State, the court may forthwith appoint that person without issuing an order to show cause.

Note: Source -- R.R. 4:102-8. Amended July 26, 1984 to be effective September 10, 1984; former R. 4:83-8 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; caption and text amended July 12, 2002 to be effective September 3, 2002; caption and text amended July 9, 2008 to be effective September 1, 2008.

4:86-9. Guardians for Incapacitated Persons Under Uniform Veterans Guardianship Law

(a) Complaint for Appointment. An action for the appointment of a guardian under N.J.S.A. 3B:13-1 et seq. for an alleged incapacitated person shall be brought in the Superior Court by any person entitled to priority of appointment. If there is no person so entitled or if the person so entitled fails or refuses to commence the action within 30 days after the mailing of notice by a federal agency to the last known address of such person entitled to priority of appointment, indicating the necessity for the appointment, the action may be brought by any person residing in this State, acting on the alleged incapacitated person's behalf.

(b) Complaint. The complaint shall state (1) the name, age and place of residence of the alleged incapacitated person; (2) the name and place of residence of the nearest relative, if known; (3) the name and address of the person or institution, if

any, having custody of the alleged incapacitated person; (4) that such alleged incapacitated person is entitled to receive money payable by or through a federal agency; (5) the amount of money due and the amount of probable future payments; and (6) that the alleged incapacitated person has been rated an incapacitated person on examination by a federal agency in accordance with the laws regulating the same.

(c) Proof of Necessity for Guardian of Incapacitated Person. A certificate by the chief officer, or his or her representative, stating the fact that the alleged incapacitated person has been rated an incapacitated person by a federal agency on examination in accordance with the laws and regulations governing such agency and that appointment is a condition precedent to the payment of money due the alleged incapacitated person by such agency shall be prima facie evidence of the necessity for making an appointment under this rule.

(d) Determination of Incapacity. Incapacity may be determined on the certificates, without other evidence, of two medical officers of the military service, or of a federal agency, certifying that by reason of incapacity the alleged incapacitated person is incapable of managing his or her property, or certifying to such other facts as shall satisfy the court as to such incapacity.

(e) Appointment of Guardian; Bond. Upon proof of notice duly given and a determination of incapacity, the court may appoint a proper person to be the guardian and fix the amount of the bond. The bond shall be in an amount not less than that which will be due or become payable to the incapacitated person in the ensuing year. The court may from time to time require additional security. Before letters of guardianship shall issue, the guardian shall accept the appointment in accordance with R. 4:96-1.

(f) Termination of Guardianship When Incapacitated Person Regains Capacity. If the court has appointed a guardian for the estate of an incapacitated person, it may subsequently, on due notice, declare the incapacitated person to have regained capacity on proof of a finding and determination to that effect by the medical authorities of the military service or federal agency or based on such other facts as shall satisfy the court as to the capacity of the incapacitated person. The court may thereupon discharge the guardian without further proceedings, subject to the settlement of his or her account.

(g) Complaint in Action to Have Guardian Receive Additional Personalty. The complaint in an action to authorize the guardian, pursuant to law, to receive personal property from any source other than the United States Government shall set forth the amount of such property and the name and address of the person or institution having actual custody of the incapacitated person.

(h) Definitions. Definitions contained in N.J.S. 3B:13-2 shall apply to the terms of this rule.

Note: Source — R.R. 4:102-9(a) (b) (c) (d) (e) (f) (g) (h), 4:103-3 (second sentence). Paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a) through (f) and (h) of former R. 4:83-9 amended and rule

redesignated June 29, 1990 to be effective September 4, 1990; caption amended, paragraphs (a) and (b) amended, paragraphs (c) and (d) captions and text amended, paragraph (e) amended, and paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (e), and (g) amended, and paragraphs (c), (d), and (f) caption and text amended August 1, 2016 to be effective September 1, 2016.

4:86-10. Appointment of Guardian for Persons Eligible for and/or Receiving Services from the Division of Developmental Disabilities

An action pursuant to N.J.S.A. 30:4-165.7 et seq. for the appointment of a guardian for a person over the age of 18 who is eligible for and/or receiving services from the Division of Developmental Disabilities shall be brought pursuant to these rules insofar as applicable, except that:

(a) The complaint may be brought by the Commissioner of Human Services or a parent, spouse, relative or other party interested in the welfare of such person.

(b) In lieu of the affidavits or certifications prescribed by R. 4:86-2, the verified complaint shall have annexed thereto two documents. One document shall be an affidavit or certification submitted by a practicing physician or a psychologist licensed pursuant to P.L. 1966, c.282 (N.J.S.A. 45:14B-1 et seq.) who has made a personal examination of the alleged incapacitated person not more than six months prior to the filing of the verified complaint. The other document shall be one of the following: (1) an affidavit or certification from the chief executive officer, medical director or other officer having administrative control over a Division of Developmental Disabilities program from which the individual is receiving functional or other services; (2) an affidavit or certification from a designee of the Division of Developmental Disabilities having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action; (3) a second affidavit or certification from a practicing physician or psychologist licensed pursuant to P.L. 1966, c.282 (N.J.S.A. 45:14B-1 et seq.); (4) a copy of the Individualized Education Program, including any medical or other reports, for the individual who is subject to the guardianship action, which shall have been prepared no more than two years prior to the filing of the verified complaint; or (5) an affidavit or certification from a licensed care professional having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action. The documents shall set forth with particularity the facts supporting the belief that the alleged incapacitated person suffers from a significant chronic functional impairment to such a degree that the person lacks the cognitive capacity either to make decisions or to communicate, in any way, decisions to others.

(c) If the petition seeks guardianship of the person only, the Division of Mental Health Advocacy, in the Office of the Public Defender, if available, shall be appointed as attorney for the alleged incapacitated person, as required by R. 4:86-4. If the Division of Mental Health Advocacy, in the Office of the Public Defender, is unavailable or if the petition seeks guardianship of the person and the estate, the court shall appoint an attorney to represent the alleged incapacitated person. The attorney for the alleged

incapacitated person may where appropriate retain an independent expert to render an opinion respecting the incapacity of the alleged incapacitated person.

(d) The hearing shall be held pursuant to R. 4:86-6 except that a guardian may be summarily appointed if the attorney for the alleged incapacitated person, by affidavit or certification, does not dispute either the need for the guardianship or the fitness of the proposed guardian and if a plenary hearing is not requested either by the alleged incapacitated person or on his or her behalf.

Note: Adopted July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978. Former rule deleted and new rule adopted November 5, 1986 to be effective January 1, 1987; caption amended and paragraphs (b), (c) and (d) of former R. 4:83-10 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b), (c) and (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) amended July 22, 2014 to be effective September 1, 2014; caption amended, introductory paragraph and paragraphs (b), (c) and (d) amended August 1, 2016 to be effective September 1, 2016.

4:86-11. Appointment of Conservator

(a) Commencement of Action; Complaint. An action pursuant to N.J.S.A.3B:13A-1, et seq. for the appointment of a conservator shall be brought by a conservatee or other person on his or her behalf on notice, as provided by N.J.S.A. 3B:13A-5 and 6. The complaint shall be filed in the Superior Court and shall state (1) the conservatee's age and residence, (2) the names and addresses of the conservatee's heirs and all other persons entitled to notice pursuant to N.J.S.A. 3B:13A-6 and (3) the nature, location and fair market value of all property, real and personal, in accordance with R. 4:86-2(a).

(b) Hearing. The court, without a jury, shall take testimony in open court to determine whether the conservatee, by reason of advanced age, illness or physical infirmity, is unable to care for or manage his or her property or has become unable to provide for himself or herself or others dependent upon him or her for support. The court may appoint counsel for the conservatee if it concludes that counsel is necessary to protect his or her interests. If the conservatee is unable to attend the hearing by reason of physical or other disability, the court shall appoint a guardian ad litem to conduct an investigation to determine whether the conservatee objects to the conservatorship. If counsel for the conservatee has, however, been appointed, such counsel shall conduct the investigation and no separate guardian ad litem shall be appointed. In no case shall a conservator be appointed if the court finds that the conservatee objects thereto.

(c) Acceptance of Appointment. An acceptance of appointment as conservator may be taken before any person authorized by the laws of this State to administer an oath.

(d) Settlement of Conservator's Account. Where the court, for good cause shown, orders a full accounting by the conservator, the account shall be settled in the Superior Court in accordance with R. 4:87, insofar as applicable.

Note: Adopted July 26, 1984 to be effective September 10, 1984; paragraphs (a), (b) and (c) of former R. 4:83-11 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:86-12. Special Medical Guardian in General Equity

(a) Standards. On the application of a hospital, nursing home, treating physician, relative or other appropriate person under the circumstances, the court may appoint a special guardian of the person of a patient to act for the patient respecting medical treatment consistent with the court's order, if it finds that:

(1) the patient is incapacitated, unconscious, underage or otherwise unable to consent to medical treatment;

(2) no general or natural guardian is immediately available who will consent to the rendering of medical treatment;

(3) the prompt rendering of medical treatment is necessary in order to deal with a substantial threat to the patient's life or health; and

(4) the patient has not designated a health care representative or executed a health care instruction directive pursuant to the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 to -78, determining the treatment question in issue.

(b) Venue. The application shall be made to the Superior Court judge assigned to general equity in the vicinage in which the patient is physically located when the application is made and, in the event of that judge's unavailability, to the Assignment Judge of the vicinage or the judge designated as the emergent judge, or if neither is available, any judge in the vicinage.

(c) Procedure. The procedure on the application shall conform as nearly as practicable to the requirements of R. 4:86-1 to R. 4:86-6, but the judge may, if the circumstances require, accept an oral complaint and oral testimony either by telephone, in court, or at any other suitable location. If the circumstances do not permit the making of a verbatim record, the judge shall make detailed notes of the allegations of the complaint and the supporting testimony. Whenever possible an attorney shall be appointed to represent the patient.

(d) Order. The order granting the application, if orally rendered, shall be reduced to writing as promptly as possible and shall recite the findings on which it is based.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraphs (a), (b) and (c) of former R. 4:83-12 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(1) amended July 12, 2002 to be effective September 3, 2002; caption and paragraph (a)(1) amended July 9, 2008 to be effective September 1, 2008.