

APPENDIX

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**A. Supreme Court of Virginia Order
denying Petition for Rehearing (Record
No. 161829) on 21 of November 2017**

VIRGINIA:

*In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Tuesday the 21st day of November, 2017.*

Yosef Gavriel Tirat-Gefen,
Appellant,

against Record No. 161829
 Circuit Court No.
 CL2014-05376

Celia Batista Almeida,
Appellee.

Upon a Petition for Rehearing
On consideration of the petition of the appellant to
set aside the judgment rendered herein on the 19th
day of July, 2017 and grant a rehearing thereof, the
prayer of the said petition is denied.

A copy,

Teste: /s/Patricia L Harrington

By:

Deputy Clerk

**B. Supreme Court of Virginia Order denying
Petition for Appeal (Record No. 161829) on 19
of July 2017**

VIRGINIA:

*In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Wednesday the 19th day of July, 2017.*

Yosef Gavriel Tirat-Gefen, Appellant,

against Record No. 161829
Circuit Court No. CL2014-05376

Celia Batista Almeida, Appellee.

From the Circuit Court of Fairfax
County

Finding that the record is insufficient to
enable the Court to evaluate and resolve the
assignments of error, the Court refuses the petition
for appeal filed in the above-styled case. Rule 5: 1

1(a)(1).

A copy,
Teste:

/s/ Patricia L, Harrington
By:
Deputy Clerk

**C. Circuit Court of Fairfax County Order of
denial of second statement of facts in lieu of
transcripts (Case CL 2014-05376 – an
incapacitated adult) on 29 of December 2016**

VIRGINIA:

**IN THE CIRCUIT COURT OF
FAIRFAX COUNTY**

In RE: Catharina Maria De Souza Batista,
) CL-2014-0005376 An Incapacitated Person
) FI-2015-0000723

ORDER

THIS MATTER has come before the Court on Written Statement in Lieu of a Transcript, pursuant to Rule 5:11(e) of the Rules of the Virginia Supreme Court, by Mr. Yosef Gavriel Tirat-Gefen, on December 7, 2016. It then appearing that this Court has already found the correct Statement of Facts regarding this matter, as entered in the previous Order dated December 6, 2016. It is, therefore:

ORDERED, ADJUDGED AND DECREED that Mr. Tirat-Gefen's Written Statement in Lieu of a Transcript, filed December 7, 2016, is rejected.

ENTERED this 29 day of December ,2016

/s/ Judge, Circuit Court of Fairfax County

**D. Circuit Court of Fairfax County Order of
denial of first statement of facts in lieu of
transcripts (Case CL 2014-05376) on 6 of
December 2016**

VIRGINIA:

**IN THE CIRCUIT COURT OF
FAIRFAX COUNTY**

**In RE: Catharina Maria De Souza Batista,
) CL-2014-0005376 An Incapacitated Person
) FI-2015-0000723**

ORDER

THIS MATTER came before the Court on the timely filing of a Written Statement in lieu of a transcript, pursuant to Rule 5:11(e) of the Rules of the Virginia Supreme Court, by Mr. Yosef Gavriel Tirat-Gefen, on November 21, 2016. It then appearing that Petitioner, by counsel, submitted her Objections to the Written Statement, on December 6, 2016. Upon review of said filings:

ORDERED, ADJUDGED AND DECREED that Mr. Tirat-Gefen's Written Statement is rejected. Additionally, the Court overrules Petitioner's Objections to the Written Statement.

It is FURTHER ORDERED, ADJUDGED AND DECREED that the Statement of Facts in this matter is as follows: The Parties appeared before the Court on September 27, 2016. At that time, the Parties tendered a fully-endorsed Agreed Order to

the Court (a copy of which is attached as Exhibit A). As such, no evidence was adduced, and no testimony was taken by the Court. The Agreed Order was subsequently endorsed by the undersigned Judge and entered on September 27, 2016.

ENTERED this 6th day of December, 2016.

/s/ Penney S. Azcarate
Penney S. Azcarate
Judge, Circuit Court of
Fairfax County

ENDORSEMENT OF THIS ORDER BY COUNSEL
OF RECORD FOR THE PARTIES IS WAIVED IN
THE DISCRETION OF THE COURT PURSUANT
TO RULE 1:13 OF THE SUPREME COURT OF
VIRGINIA.

**AGREED ORDER ENTERED ON
SEPTEMBER 27, 2016**

VIRGINIA:

**IN THE CIRCUIT COURT OF FAIRFAX
COUNTY**

**IN RE: CATHARINA MARIA DE SOUZA
BATISTA**

) CL No. 2014.05376 An Incapacitated Adult
) FI No. 2015-00723

AGREED ORDER

THIS CAUSE CAME TO BE HEARD on the Petition of Celia Almeida nee Celia Batista to Modify Order of Appointment of Guardian/Conservator for CATHARINA MARIA DE SOUZA BATISTA (hereinafter "Mrs. Batista") and the Answer & Counter Petition filed by Yosef Gavriel Tirat-Gefen.

IT APPEARING TO THE COURT that by the 16th of April 2015 Order of this Court Jean Galloway Ball, Esquire, was appointed Guardian of the Person and Conservator of the Property for Mrs. Batista and subsequently qualified as such on the 17th of April 2015; and

IT FURTHER APPEARING TO THE COURT that the parties have reached an agreement, as reflected in this Agreed Order, that Jean Galloway Ball, Esquire, shall continue to serve as guardian of the person and conservator of the property of Mrs. Batista on the following terms. Based on the

findings of the Court made in the original hearing in this matter and the findings in the prior Order of the 16th of April 2015 and the agreement of the parties, the Court makes the following findings.

1. Respondent Catharina Maria de Souza Batista is 76 years old and her date of birth is October 22, 1939.

2. Mrs. Batista currently resides at 9204 Burnetta Drive, Annandale, Virginia. The Commonwealth of Virginia is Mrs. Batista home state as defined at Section 64.2-2105 of the Code of Virginia.

3. Mrs. Batista is an incapacitated person as defined by Virginia Code §64.2-2000. Mrs. Batista continues to be in need of a guardian and conservator.

4. Mrs. Batista is widowed with three (3) adult children, including the Petitioner Celia Batista Almeida ("Mrs. Almeida"), the Cross-Petitioner, ("Mr. Tirat-Gefen") and a daughter-who resides in Brazil, Carmem Lucia de Souza Batista.

5. Mrs. Batista receives a monthly pension from the Brazilian government in the amount of approximately \$1,945.67. The actual amount received fluctuates depending on the currency exchange rate. Her financial account contains less than \$2,000.00. Her two-thirds interest in real property in Brazil is under contract for sale to her daughter Carmem Lucia de Souza Batista. Mrs. Batista is currently qualified to receive long term care benefits under the Virginia Medicaid program.

Based on the foregoing and the agreement of the parties, it is ORDERED that

1. Catharina Maria De Souza Batista continues to be an incapacitated person.

2. The appointment of Jean Galloway Ball, Esquire as Mrs. Batista's Guardian is confirmed until further order of this Court, with all the powers, liabilities and duties as set out in §64.2-2019 and §64.2-2020 of the Code of Virginia (1950), as amended. The Guardian is further granted:

A. The power and sole discretion to exercise complete custody and control over the person of Catharina Maria De Souza Batista, but only as necessary or helpful to provide for her admission or retention, even if contrary to her expressed wishes or the expressed wishes of her adult children, to any nursing facility, convalescent home, continuing care retirement community, adult care residence, private home, or any other residential or therapeutic placement in the Commonwealth of Virginia, giving consideration to placement within a reasonable distance to the homes of Ms. Almeida and Mr. Tirat-Gefen;

B. the power and sole discretion to consent, withhold consent, suspend consent, or terminate consent as to medical procedures affecting Catharina Maria De Souza Batista if, before the Guardian consents, withholds consent, suspends consent, or terminates consent, the Guardian makes a good faith effort to ascertain the risks and benefits of and alternatives to the procedures or treatment, or termination or withdrawal of such treatment, and the religious beliefs and basic values of Catharina Maria De Souza Batista.

3. In making decisions concerning Catharina Maria De Souza Batista, the Guardian shall take

into consideration her wishes to the maximum extent possible and known, consistent with her best interests.

4. Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Standards, as defined under 45 C.F.R. Sections 160 and 164 and specifically under 45 C.F.R. Section 164.502(g), as Guardian of Catharina Maria De Souza Batista, Jean Galloway Ball, Esquire, shall be designated her "personal representative" to act on her behalf and "treated as the individual" for purposes of disclosure, receipt and inspection of any medical records and health information.

5. The Guardian shall keep Mrs. Almeida and Mr. Tirat-Gefen apprised of all major medical decisions regarding Mrs. Batista.

6. The Guardian shall provide Ms. Almeida and Mr. Tirat-Gefen with reasonable access to Mrs. Batista's medical records, provided such access is in the best interests of Mrs. Batista, as determined by the Guardian.

7. . While Mrs. Batista resides at the home of Ms. Almeida, Mr. Tirat-Gefen shall have time with Mrs. Batista as follows.

a. Each weekend, except for deviations agreed by the siblings, Mrs. Almeida or her designated representative will deliver Mrs. Batista by nightfall on Saturday to the home of Mr. Tirat-Gefen in Rockville, Maryland. Mr. Tirat-Gefen or his designated representative will return Mrs. Batista to Mrs., Almeida's home in Annandale, Virginia by noon on the following Monday.

b. On Christian holidays, including, but not limited to, Christmas Eve, Christmas Day and

Easter and on Mrs. Almeida's or her children's birthdays, Mrs. Batista shall remain with Mrs. Almeida.

c. On Jewish holidays, including but not limited to, Passover, Shavuot, New Year, Succot, Mr. Tirat-Gefen's birthday, and the birthdays of Mr. Tirat-Gefen's children and grandchildren, their circumcisions or naming ceremonies, bar or bat mitzvahs, and weddings, Mr. Tirat-Gefen or his designate may pick up Mrs. Batista at a mutually agreed time, or at a time determined by the Guardian if no agreement can be reached, and transported to Mr. Tirat-Gefen's home for purposes of celebrating the holiday, birthday, or ceremony.

d. The schedule for Mrs. Batista's birthday, where she will stay and when, will be determined by mutual agreement of Mr. Tirat-Gefen and Mrs. Almeida, or by the Guardian if no agreement can be reached.

e. The foregoing schedule is subject to modification in the discretion of the Guardian as circumstances warrant and/or by mutual agreement of Mr. Tirat-Gefen and Mrs. Almeida.

8. The Guardian shall have the power, but not the duty, to direct and provide for the disposition and interment of the mortal remains of Catharina Maria De Souza Batista at death and is authorized as Conservator to expend funds to prepay her funeral and burial arrangements.

9. The appointment of Jean Galloway Ball, Esquire, as Conservator of Catharina Maria De Souza Batista, with all the powers and responsibilities conferred by Sections 64.2-2021 and Section 64.2-2022 of the Code is confirmed.

10. As Conservator, Jean Galloway Ball, Esquire, shall continue to control all the assets of Catharina Maria De Souza Batista and manage them for the benefit of Catharina Maria De Souza Batista.

11. As Conservator Jean Galloway Ball, Esquire, is authorized to utilize all income and assets belonging to Respondent for her support, maintenance and healthcare.

12. The Guardian and Conservator is granted the authority to take any necessary steps to apply for, qualify, and obtain benefits to which the Respondent may now or in the future become entitled, regardless of the public or private entity involved, including but not limited to benefits payable to or for the Respondent's benefit by any governmental agency or body, such as Medicaid and Medicare.

13. Mrs. Batista is currently qualified for and receiving community based care Medicaid waiver services including in-home assistance while she resides in Virginia. The future cost of any caregiver hired privately (not a caregiver paid by Medicaid) to care for Mrs. Batista while residing with Mrs. Almeida or Mr. Tirat-Gefen shall be paid by the person who hires the caregiver provided, however that said language about said costs shall apply only until such time as Medicaid eligibility is lost or Medicaid benefits are not received, if at all, the parties shall submit to a Court of appropriate Jurisdiction the issue or said costs under applicable law at which time said court shall determine whether and how to allocate said costs between the parties. To the extent funds are available from Mrs. Batista's personal needs allowance or other income,

the Conservator may reimburse Mrs. Almeida or Mr. Tirat-Gefen for the cost of said private caregivers.

14. Catharina Maria De Souza Batista's incapacity is such that she may not contract, sue or be sued in her own name.

15. It shall be unlawful for Mrs. Batista to purchase, possess or transport a firearm pursuant to Va, Code §18.2-308.1:2.

16. Catharina Maria De Souza Batista's incapacity is such that she is disqualified from voting and is not eligible for a driver's license. To the extent necessary to effectuate these findings, the Clerk of the Court shall issue a certified copy or abstract of this finding of incapacity to the General Registrar of Voters who shall take the appropriate steps pursuant to Va, Code §24.2-427 and to the Commissioner of the Virginia Department of Motor Vehicles pursuant to Va. Code §46.2-400.

17. As Conservator, Jean Galloway Ball, Esquire has posted bond with surety in the amount of \$24,100, which shall remain in effect for the faithful performance of her duties as Conservator.

18. As Guardian, Jean Galloway Ball, Esquire has entered into and executed a bond before the Clerk of this Court in the sum of \$1,000.00 without surety which shall remain in effect,;

19. While serving as Guardian and Conservator Jean Galloway Ball, Esquire, shall be entitled to payment for her services in the amount of \$350.00 per hour and reimbursement of expenses, with said payment to be made by Petitioner Celia Almeida and Cross-Petitioner Yosef Gavriel Tirat-Gefen, one half each, within thirty (30) days of receipt of an invoice for said services, with the exception that if in the

opinion of the Guardian/Conservator costs for her time are attributable to one child of Mrs. Batista rather than both, then said costs shall be billed and payable by the child to whom the cost for the services is attributed by the Guardian/Conservator.

20. Notwithstanding the terms of Paragraph 19, liability for any Conservator and/or legal fees and/or guardian ad litem fees or other fees and costs incurred by the Conservator in bringing an action against any one of Mrs. Batista's children shall be determined by the Court hearing the lawsuit. Failure of the Court to award fees and costs against the defendant child shall not bar the Conservator from seeking reimbursement from the conservatorship estate.

21. To the extent the income, assets, insurance and/or public benefits received by Mrs. Batista are insufficient to defray all ordinary expenses associated with her daily care which are incurred by the Guardian, excluding costs associated with hospitalization and other major medical expenses, Mrs. Almeida and Mr. Tirat-Gefen each shall be responsible for one-half (1/2) of any such reasonable ordinary uncovered expenses, provided, however, that if either Mrs. Almeida or Mr. Tirat-Gefen pays or advances or otherwise pays more than one-half (1/2) of any of said expense and the other later pays his or her one-half (1/2), the first sibling shall be entitled to be reimbursed from the payment by the second sibling and further provided that each shall pay his or her one-half (1/2) on a monthly basis, Uncovered ordinary expenses incurred for the benefit of Mrs. Batista-in only one home will be paid for by the child whose home the expense is incurred

in, except as otherwise provided, however the said preceding language about said costs shall apply only until said time or Medicaid eligibility is lost and or Medicaid benefits are not received, if at all, at which time the parties shall submit to a court of appropriate jurisdiction the issue of said costs under applicable law at which time said courts shall determine whatever and how to allocate said costs between the parties.

22. The Guardian/Conservator is authorized to reimburse herself from the proceeds of sale of Mrs. Batista's interest in the Brazilian property for her past services as guardian/conservator which are unpaid at the time of the receipt of said proceeds.

23. The Guardian/Conservator shall hire a geriatric care manager ("GCM") to manage all matters related to the health care of Mrs. Batista. With the exception of emergencies, said geriatric care manager shall be the only individual responsible for scheduling and/or canceling all health related appointments. All costs associated with the services of the GCM shall be payable by Mr. Tirat-Gefen.

24. The Guardian ad Litem shall be entitled to payment of a fee of \$11,731 for services rendered, to be paid in equal shares by Mr. Tirat-Gefen and Ms. Almeida in (12) monthly installments, to commence within thirty (30) days of entry of this Order. Should the conservatorship receive funds from the sale of the Brazilian property, any unpaid fees may be paid from said funds. The obligation of Mr. Tirat-Gefen and Ms. Almeida to make monthly payments shall continue until such time as all fees due the Guardian ad Litem are paid.

25. All disputes between Mrs. Almeida and Mr. Tirat-Gefen, including those raised by the Petition and Counter-Petition, are dismissed as settled, except as otherwise provided herein.

26. All previously executed financial powers of attorney and advance medical directives remain revoked.

27. Should any dispute arise from this Order, if, in the discretion of the Guardian/Conservator, the Guardian/Conservator determines that mediation is appropriate, Mr. Tirat-Gefen and Mrs. Almeida agree to engage in mediation before filing any proceeding with a Court of proper jurisdiction. If it is decided to proceed with mediation, the mediator will be selected by agreement of Mrs. Almeida and Mr. Tirat-Gefen. The responsibility for payment of all costs and fees associated with mediation shall be determined in the mediation.

28. Mr. Tirat-Gefen shall, within ninety (90) days of the entry of the order, pay Mrs. Almeida the funds he owes her because of his failure to reimburse her for the funds that she reasonably advanced for the costs of care for Ms. Batista upon presentation to Mr. Tirat-Gefen and the Guardian/Conservator of reasonable proof of said reasonable costs of care. Mrs. Almeida shall, within ninety (90) days of the entry of the order, pay Mr. Tirat-Gefen the funds she owes him because of her failure to reimburse him for the funds that he reasonably advanced for the costs of care for Ms. Batista upon presentation to Ms. Almeida and the Guardian/Conservator of reasonable proof of said reasonable costs of care.. This reimbursement provision is applicable only to costs incurred since April 16, 2015. If the parties do

not agree on whether any reimbursement is owed or its amount, the dispute shall be resolved by the Circuit Court for Fairfax County.

29. Ms. Almeida and Mr. Tirat-Gefen shall each bear the cost of his or her own legal fees with no right of reimbursement from the other.

30. Without the express permission from the Guardian, neither Mr. Tirat-Gefen nor Mrs. Almeida shall schedule any appointment for Mrs. Batista with any health care provider that Mrs. Batista has not previously seen pursuant to the medical regimen previously approved by the Guardian.

31. If either party incurs attorney's fees as a result of the other's failure to abide by the terms of this Order, the party prevailing in any proceeding to enforce this Order or to obtain relief under it shall be entitled to an award of his or reasonable attorney's fees (which shall be paid by the non-prevailing party).

32. The Order entered on April 16, 2015 stands ratified and confirmed, but replaced by this Order.

ENTERED this 27 day of September 2016.

/s/ Judge
JUDGE

WE ASK FOR THIS:

/s/ John A. Dinucci

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Counsel for Petitioner

/s/ Robert J. Hartsoe

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/s/ A. Mark Christopher

A. Mark Christopher, Esquire (VSB No. 19026)

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Guardian ad Litem

/s/ Jean Galloway Ball

Jean Galloway Ball, Esquire (VSB No. 19280)

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**E. Circuit Court of Fairfax County Order of
denial of Motion for Reconsideration (Case
CL 2014-05376) on 6 of December 2016**

VIRGINIA:

**IN THE CIRCUIT COURT OF FAIRFAX
COUNTY**

In RE: Catharina Maria De Souza Batista,

) CL-2014-0005376 An Incapacitated Person

) FI-2015-0000723

ORDER

THIS MATTER came before the Court on the Motion for Reconsideration filed by YOSEF GAVRIEL TIRAT-GEFEN on October 11, 2016; upon review of said motion:

IT APPEARING to the Court that no relevant issues are raised by the motion that would warrant reconsideration or a rehearing of the matter; it is therefore,

ORDERED, ADJUDGED AND DECREED that the Motion for Reconsideration filed by Mr. Tirat-Gefen is denied.

ENTERED this 13th day of October, 2016.

/s/ Penny S. Azcarate

Penney S. Azcarate

Judge, Circuit Court of Fairfax County

ENDORSEMENT OF THIS ORDER BY COUNSEL
OF RECORD FOR THE PARTIES IS WAIVED IN
THE DISCRETION OF THE COURT PURSUANT
TO RULE 1:13 OF THE SUPREME COURT OF
VIRGINIA.

**F. - CONSTITUTIONAL AND STATUTORY
PROVISIONS**

1. U.S. Constitution, Amendment V, provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**2. U.S. Constitution, Amendment XIV, § 1
provides in pertinent part:**

No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The Constitution of Virginia (1971) provides in pertinent part:

ARTICLE I

Bill of Rights

A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men.

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. ...

Section 11. Due process of law; obligation of contracts; taking or damaging of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; ...

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

4. Virginia Code. Title 64.2. Wills, Trusts, and Fiduciaries. Chapter 20. Guardianship and Conservatorship. § 64.2-2005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed, under seal, with the court and provided to the guardian ad litem, the respondent, and all adult individuals and all entities to whom notice is required under subsection C of § 64.2-2004 within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown, absent any objection by the guardian ad litem, or may order a report and delay the hearing until the report is prepared, filed, and provided.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's specific functional impairments;
 2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;
 3. The date or dates of the examinations, evaluations, and assessments upon which the report is based; and
 4. The signature of the person conducting the evaluation and the nature of the professional license held by that person.
- C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.
- D. A report prepared pursuant to this section shall be admissible as evidence in open court of the facts stated in the report and the results of the examination or evaluation referred to in the report, unless counsel for the respondent or the guardian ad litem objects.

5. Virginia Code. Title 64.2. Wills, Trusts, and Fiduciaries. Chapter 20. Guardianship and Conservatorship. § 64.2-2006. Counsel for respondent:

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. Counsel appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under 禮 64.2-2005.

6. Va. Code Ann. § 64.2-2019. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable

for the acts of the incapacitated person unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate

in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A guardian shall not unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship.

F. A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil liability for

any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

7. Virginia Code. Title 18.2. Crimes and Offenses Generally. Chapter 8. Crimes Involving Morals and Decency. § 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v)

maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Health Care Decisions Act (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care.

8. Va. Code Ann. § 20-88 - Support of Parents by Children

It shall be the joint and several duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances. If there be more than one person bound to support the same parent or parents, the persons so bound to support shall jointly and severally share equitably in the discharge of such duty. Taking into consideration the needs of the

parent or parents and the circumstances affecting the ability of each person to discharge the duty of support, the court having jurisdiction shall have the power to determine and order the payment, by such person or persons so bound to support, of that amount for support and maintenance which to the court may seem just. Where the court ascertains that any person has failed to render his or her proper share in such support and maintenance it may, upon the complaint of any party or on its own motion, compel contribution by that person to any person or authority which has theretofore contributed to the support or maintenance of the parent or parents. The court may from time to time revise the orders entered by it or by any other court having jurisdiction under the provisions of this section, in such manner as to it may seem just.

The juvenile and domestic relations district court shall have exclusive original jurisdiction in all cases arising under this section. Any person aggrieved shall have the same right of appeal as is provided by law in other cases.

All proceedings under this section shall conform as nearly as possible to the proceedings under the other provisions of this chapter, and the other provisions of this chapter shall apply to cases arising under this section in like manner as though they were incorporated in this section. Prosecutions under this section shall be in the jurisdiction where the parent or parents reside.

This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother, as the case may be, prior to the child's emancipation or, except as provided hereafter in this section, if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.

To the extent that the financial responsibility of children for any part of the costs incurred in providing medical assistance to their parents pursuant to the plan provided for in § 32.1-325 is not restricted by that plan and to the extent that the financial responsibility of children for any part of the costs incurred in providing to their parents services rendered, administered or funded by the Department of Behavioral Health and Developmental Services is not restricted by federal law, the provisions of this section shall apply. A proceeding may be instituted in accordance with this section in the name of the Commonwealth by the state agency administering the program of assistance or services in order to compel any child of a parent receiving such assistance or services to reimburse the Commonwealth for such portion of the costs incurred in providing the assistance or services as the court may determine to be reasonable. If costs are incurred for the institutionalization of a parent, the children shall in no case be responsible for such costs for more than sixty months of institutionalization.

Any person violating the provisions of an order entered pursuant to this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$500 or imprisonment in jail for a period not exceeding twelve months or both.

**G. GUARDIAN AD LITEM'S REPORT -
DECEMBER 12, 2015 -EXCERPTED**

Selection of the Guardian - Possible Joint
Guardianship

A. Because this is a contested case, and the two parties may go to hearing, each seeking their appointment as guardian, I currently defer in this First Report with regard to the selection of a Guardian for Catharina. It appears to me that Celia has her mother's health and well-being at heart and provides good care. However, Yosef has proposed that he be the guardian, as well and he may, very well have those same interests at heart. Each advances the notion that they have benefited Catharina, usually at different times, and that the other has caused harm. Each party raises concerns regarding denial of access or visitation by the other petitioner and quality of care issues. Yosef says that he has not seen his mother in months. Both Petitioner and Cross-Petitioner advance why they should be appointed and why the other should not be. However, the pleadings also describe that they have a shared history of caring for Catharina, each being the primary caregiver or providing oversight at different periods. I believe there could be conditions under which their joint appointment could be in the best interests of Catharina and resolve the case.

B. I have also been considering whether a joint guardianship may be most in-line with the presumed desire of the Ward when she was of sound

mind. Catharina did not voice a preference of one child over the other. I realize that she may not have the present capacity to do so. However, she was oriented as to person; she knew who she was and who her immediate family members are. In addition, there is a history of each of her US-based children having looked after her for extended periods of time (mostly at different periods) while Catharina has been in the United States. Of course, there are allegations against Yosef, for example, that he is callous. There are allegations that Celia decided or acquiesced in a decision to have Catharina return to Brazil, during which time she is alleged to have declined. Each blames the other. In preparing this report I focused on is what is in Catharina's best interests now and for her future. It is reasonable to believe that one of her basic values is a love for all of her children and that she gets some benefit from all their company (visitation) and that each has talents and energy to look after her and that each child will benefit from the other's assistance as long as Catharina's quality of care is good.

The question is whether the alleged detrimental episodes and decisions will be repeated, go unchecked or go unreported. I believe that there are some safeguards that have not been considered that could be lead to a beneficial joint guardianship. My suggestions will require that both parties cooperate with each other and discharge their duties as guardians before the Court in an appropriate manner.

The Maryland Uniform Adult Guardianship

17. A reason to grant co-guardianship to both Yosef and Celia lies in changes to the law. Maryland, like Virginia, has recently enacted the Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act (the "UAGPPJA") [Maryland Code, Estates and Trusts, §13.5401, et. seq.] Yosef now lives in Maryland. The Maryland Code includes provisions regarding the registration of protective orders from other states, with regard to both guardianships and conservatorships, and uniformity of application and construction of law with respect to the subject matter among the states that have enacted it, provided, that, after giving notice to the appointing Court of an intent to register, the guardian registers the Order in Maryland by filing, as a Foreign Judgment in a court of the appropriate county, certified copies of the Order and letters of office. [See, e.g. Maryland Code, Estates and Trusts, §13.5-401 and 402].

B. Through UAGPPJA, if Josef qualified as a co-guardian with the Fairfax County Court, he would be subject to the Maryland Courts with regard to his duties and responsibilities if he were appointed in Virginia as soon as the Virginia Order is properly filed in Maryland. This provides assurance of continuing jurisdiction and oversight of both of the possible co-guardians. Of course, Celia lives in Virginia.

C. Both petitioners were appointed then both would be charged with the duties and responsibilities as set forth in the Code, including all the reporting

requirements. Each would get a packet from the Clerk. Each would sign the Bond Book.

D. If both petitioners appear before the Court for their joint appointment, even if on the uncontested docket, a Court Reporter could be utilized to record any assurances the Court may deem appropriate from either or both of them prior to their appointment.

E. The order of appointment could include other oversight requirements.

Possible Single Guardianship

18. It is premature for me to make a recommendation of either Petitioner or Cross-Petitioner as the only guardian.

Possible Independent Guardian

19. It is premature for me to make a recommendation of appointing an independent guardian.

Role of a Geriatric Care Manager

20. A. By this Report I indicate that I support the immediate hiring of a geriatric care manager who is mutually agreeable to counsel, to regularly oversee the care plan for Catharina, and who could be

consulted to resolve or help resolve disputes. I will endorse an order that provides for this hiring. While I realize that there are questions raised about the Power of Attorney under which Celia is operating, I suggest she be indemnified for the purpose of hiring and paying for the geriatric care manager. I should have immediate contact and access to the care manager as well as all information regarding her care plan.

B. If an appointment is made, the care manager can serve in the important role of providing oversight and assistance. We should explore whether or how it may be possible for the care manager to resolve disputes or serve as a "tie breaker" with regard to decisions.

Recommendation as to Conservator

22. I recommend the appointment of an independent Conservator for Catharina, presumably an attorney who regularly practices before this Court.