

STETSON UNIVERSITY
2025 National Conference on Special Needs Planning and Special Needs Trusts

Sex, Drugs, and Rock n' Roll!!!: Atypical Beneficiary Distribution Requests

Megan Brand
Executive Director
Colorado Fund for People with Disabilities
mbrand@cfpdtrust.org
www.cfpdtrust.org

Marco Chayet
JD
Chayet & Dando, LLC
marco@coloradoelaw.com
www.coloradoelaw.com

Peter J. Wall
Director of Fiduciary Services
True Link Financial Advisors, LLC
peter.wall@truelinkfinancial.com
www.truelinkfinancial.com

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"I woke up in a Soho doorway, a policeman knew my name..."

Duty of Loyalty

- Act in the best interest of the person you serve
- "the essence of the fiduciary relationship" [J.C. Shepherd, *The Law of Fiduciaries* 481 (1981)]

Duty of Care/Prudence

Act reasonably as any prudent person would

- Note: When someone has held themselves out as a professional in certain areas, a higher standard of care applies (esp. in litigation)
- Harvard College v. Amory* 26 Mass. (9 Pick.) 446 (1830) - "Observe how [people] of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."

Duty to Account

Accountings/reports to beneficiaries, remainder persons, interested parties, courts, public benefits agencies, etc.

Fiduciary (fi-doo-shé-ér-ee): n. "One, such as an agent of a principal or a company director, that stands in a special relation of trust, confidence, or responsibility in certain obligations to others."
Latin: fiduciarius, from fiducia - "trust"

Ramsey v. Boatmen's First Nat'l Bank of K.C., N.A., 914 S.W.2d 384, 387 (Mo.App.W.D.1996) —
Trustees are fiduciaries "of the highest order" and are required to exercise "a high standard of conduct and loyalty in administration of [a] trust." The duty of loyalty "precludes self-dealing," which in most cases would be considered a "breach of fiduciary duty."

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Framework for decision making:

Appropriateness for the individual

- Identify the need.
- Who is requesting the distribution?
 - Beware of new "players"
 - Supported Decision-Making
- Mandatory reporting
- Opinion of beneficiary advocate - outside counsel, case/care manager, investment advisor, family member?
- When is the request made or frequency of the request.
- Fiduciary internal policy & procedure.

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Framework for decision making:

Values Check

- Personal experience
- Religious upbringing
- Moral context
- Paternalism (as fiduciaries we are not mom & dad)
- Opinion of outside professional

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Framework for decision making:

Relation to Disability

- Impact on public benefits
- State vs. federal regulations

Financial Plan/Budget

- Current request vs. future needs
- SNTs = wasting trusts
- "Optimal Outcomes"
- Trust longevity projections
- Tax implications

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Framework for decision making:

Professional Input

- Outside resources to consider:
 - PSNT Board/Committee
 - Medical Professional
 - Social Worker
 - Mental Health Provider
 - Case/Care Manager
 - Trust Protector/Advisor
 - Family Members
 - Outside Counsel
- Get recommendation in writing
- Note: Consider obtaining a HIPAA release from beneficiary

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Support Options for Decision

Cross discipline advisors + Medical Professionals + Care/Case Managers + Beneficiary Friends or Family or other Supports + Fellow fiduciaries + PSNT Board Committee	External advisors + Letter of Opinion from Attorney or other professional well versed in this area (Ex Criminal Law Attorney) + Medical Professional who specializes (Ex Psychiatrist or Psychologist)	Court Intervention + Petition for instruction + Request for a Guardian Ad Litem
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BEST PRACTICE TIP: ALL DECISIONS SHOULD BE DOCUMENTED IN WRITING

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"I woke up in a Soho doorway, a policeman knew my name..."
"Who Are You"-(title track), The Who (1978)



Support Options for Decision

Use of disinterested Party + Ask for a review of the situation and objective opinion or alternative solution + Ex: Require a hunter's safety course and recommendation from the instructor that the beneficiary can safely handle a firearm + Supported Decision-Maker	Use of a Trust Protector/Advisor + Typically, an advocate for the beneficiary + Knows/understands the beneficiary better than the trustee + Doesn't necessarily relieve the trustee of liability
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"Got to be good looking 'cause he's so hard to see..."
The Beatles, "Come Together", Abbey Road (1969)



Expectation Setting

- Build bridges, not walls
 - SNT beneficiaries are no stranger to attorney's offices
- Struggles with loss of control
- Common language development
- Common enemies?
 - Parents/settlers
 - Public benefits
- Optimal Outcomes
 - Short-term: passions, hobbies, goals
 - Long-term: college, vacations, home purchase
 - Document for future reference

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"Circumstance has forced my hand, to be a cut-priced person in a low-budget land..."

The Kinks, "Low Budget," (title track), (1979)

The Kinks

Budgeting

- Disability
- Age
- Life Expectancy
- Public Benefits
- Lifestyle/Hobbies
- Employment (current or future)
- Cost of living
- Tax situation
- Education
- Investment knowledge and experience
- Risk Tolerance
- Budget (short-term and long-term)

BEST PRACTICE TIP: Review no less than annually

- Life Care Plan

BEST PRACTICE TIP: Obtain plaintiff and defendant LCP

- Waiver Programs
- Lifestyle/Hobbies
- Community Support Programs / (e.g. HUD)
- Future Funding/Inheritance

BEST PRACTICE TIP: Discount heavily

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The Kinks, "Low Budget," (title track), (1979)

The Kinks

Liranzo v. LI Jewish Education/Research, No. 28863/1996 (N.Y. Sup. Ct. June 25, 2013)

- Corporate trustee paid for caregivers that may have been available through different public benefits programs at the request of the minor beneficiary's parent
- Trust was quickly depleted
- Court found that trustee should have sought out all available avenues to pay for services, ordered trustee to reimburse trust \$176,000



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"Where you goin' with that gun in your hand...."

Framework

- Appropriateness for individual
- Need
- Relation to disability
- Professional opinion
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- Values check

Joe

- Asks for a firearm for self-defense
- Has recently filed a grievance against his mental health provider
- Liability?
- Caught his "old lady messin' around with another man"

Mitch Mitchell

- Asks for adaptive equipment to go target shooting with his brother, uncle and father
- This is one of the only activities he can actively participate in with "the guys" in his family
- Has Cerebral Palsy and uses a wheelchair

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"Where you goin' with that gun in your hand...."
Jimi Hendrix, "Hey Joe", Are You Experienced (1967)



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Benefits of owning a firearm

- Hunting to provide food or for recreation
- Personal Protection
- Collector's items

18 U.S.C. § 922(d) : unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."

- Majority of States have varying laws re: Possession of Firearms by People with Mental Illness

Trustee should consider "constructive possession" and their liability in purchasing firearms. (CT Supreme Court case in which gun-maker Remington Outdoor Co. –used in Sandy Hook shooting–was accused of marketing military style guns to civilians. Case settled for \$73M)

Other Liability

- *U.S. v Booth, et.al.* 111 F.3d 2 [1st Cir. September 1997] – constructive possession
- *Phillips v. Lucky Gunner, LLC*, No. 14-CV-02822-RPM, 2015WL 1499382 (D. Colo. Mar. 27, 2015)

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"Plucked her eyebrows on the way, shaved her legs and then he was a she...."

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Lou

- Middle aged male beneficiary with limited capacity
- Calls trustee and counsel requesting a gender reassignment operation
- No interested party had heard this request in the past
- Trust owned home
- Beneficiary had taken in two female renters
- Beneficiary lived in the basement
- Renters told beneficiary that only females could live upstairs

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"Plucked her eyebrows on the way, shaved her legs and then he was a she...."
Lou Reed, "Walk On The Wildside", Transformer (1972)



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- Gender dysphoria causes severe depression, low self-esteem
- Federal law prohibits health insurance companies from discriminating against transgender people, and it bars insurers from denying coverage based on pre-existing conditions. Many states are following suit through policy or case law.
- Medicaid coverage of gender-affirming care varies wildly from state to state
- Medicare covers a variety of gender-affirming services.
- Social Transitioning (name, pronouns, gender expression)
 - Consider intake paperwork, names in your database, distributions for clothing and personal care items
- Trustee may wish to seek a written opinion from a Medical Professional that also documents the risks of the SRS (including the potential for co-existing psychiatric disorders and treatment that may be needed)

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Lou Reed, "Walk On The Wildside," Transformer (1972)



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Considerations:

- Seek Medicare and/or Medicaid denial before making the distribution for SRS from trust.
- Age matters: as of July 2025, 27 states have passed bans on gender-affirming care for minors.
- "Bud Light Effect". A trustee would likely not advertise their support of certain distributions, but a beneficiary may! (Ex: Instagram/Facebook Post: I want to thank [PSNT Org.] for making my reassignment surgery possible.) Be prepared with a statement for media.

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"But I would not feel so all alone...."

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Mary Jane

- Requests Medicinal Marijuana
- Has a Spinal Cord Injury
- Doctor prescribed
- Resides in California
- Employed by national corporation
- Lives in HUD/Section 8 Housing

Bud

- Requests recreational marijuana
- Resides in Colorado
- Unemployed
- Sub-account funded from inherited IRA
- Trustee has "never inhaled"

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"But I would not feel so all alone...."
Bob Dylan, "Rainy Day Women #12 and #35," Blonde on Blonde (1966)



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- State vs. Federal Law
 - Cooperative Federalism and State Marijuana Regulation, 85 U. Colo. L. Rev. 1105 (2014)
 - Coats v. Dish Network, LLC, 2015 CO 44, (June 15, 2015)
- Probation/Parole
 - Use of marijuana constitutes re-arrest
- DeCambre v Brookline Housing Authority (D.Mass, No. 14-13425-WCV, March 25, 2015)
- Benefits
 - Public Housing Agencies prohibit use of "illegal drugs" as defined at the federal level
 - SNAP benefits

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"But I would not feel so all alone...."
 Bob Dylan, "Rainy Day Women #12 and #35", Blonde on Blonde (1966)

BOB DYLAN

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A Business Insider article cites the following benefits of marijuana:

- Treatment of glaucoma
- Reversal of the carcinogenic effects of tobacco and improvement of lung health
- Epileptic seizure control
- Decreased symptoms of a severe seizure disorder known as Dravet's Syndrome
- Potential cancer abatement
- Decrease of anxiety
- Reduced progression of Alzheimer's disease
- Easement of multiple sclerosis pain
- Easement of pain, severity and recurrence of muscle spasms
- Treatment of inflammatory bowel diseases
- Relief from arthritis discomfort
- Improvement in the symptoms of Lupus, an autoimmune disorder

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BOB DYLAN

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Source: National Conference of State Legislatures, 2024

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"I loved you since I knew you, I wouldn't talk down to ya...."

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Stewart

- Father of disabled young girl
- Requests \$300 in singles from daughter's trust
- Lives next to Bare Assets Gentlemen's Club

Andy

- Requests funds from sub-account to travel to Nevada
- Requests \$2,000 distribution to Cat House, Inc. (also in Nevada)
- Has ABLE account with plenty of funds available

Gordon Matthew

- Consistently has adult movies charged to his cable account bill, submitted to trustee for payment
- Trust owned home

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"I loved you since I knew you, I wouldn't talk down to ya...."
The Police, "Roxanne," Outlandos d'Amour (1978)



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Self-actualization morality, creativity, spontaneity, problem solving, lack of prejudice, acceptance of facts

Esteem self-esteem, confidence, achievement, respect of others, respect by others

Love/Belonging friendship, family, sexual intimacy

Safety security of body, of employment, of resources, of morality, of the family, of health, of property

Physiological breathing, food, water, sex, sleep, homeostasis, excretion

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The Police, "Roxanne," Outlandos d'Amour (1978)



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- Everyone has the human need for touch, companionship
- See "Right To Intimacy" – Catherine Seal & Michael Kirtland
- Prostitution is legal in only a few rural counties in Nevada
- *In re Irrevocable Supplemental Needs Trust of Collins*, A04-1018, 2004 WL 2858079 (Minn. Ct. App. Dec. 14, 2004)
- Alternatives:
 - Internet
 - Massage
 - Adaptive exercise
 - Snuggle party
 - Any social activity

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"With two cats in the yard, life used to be so hard...."
Crosby, Stills, Nash & Young, Deja Vu (1970)



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David

- Male beneficiary
- Married (wife is employed)
- Paraplegic as a result of an accident
- Said accident funded trust
- Paralysis prevents ability to conceive
- Requests trustee to pay for cost of surrogacy

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"With two cats in the yard, life used to be so hard...."
Crosby, Stills, Nash & Young, Deja Vu (1970)



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- Sole benefit
- Split cost between beneficiary and wife?
- Trustee obligation to consider viability of care to the child - financially or otherwise?

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"You're still young, that's your fault, there's so much you have to know...."

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Yusuf

- 8 years old
- Severe seizures and mobility restrictions
- Hydrotherapy has worked wonders
- Weak immune system
- Parents ask trustee to install pool at their home (2016)
- Parents own home (mortgage)
- No budgetary/trust longevity concerns

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"You're still young, that's your fault, there's so much you have to know...."
Cat Stevens, "Father and Son," Tea for the Tillerman (1970)



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Sole Benefit: POMS SI 01120.201

- Incidental/Ancillary Benefit: POMS SI 01120.201.F.3

R3 §50, comment e(3): "the presumption is that the trustee should take into account the parental duty to support the child under state law. If the trustee makes a distribution for the benefit of the child, it is really benefiting the parent. The trustee may exercise discretion to distribute for benefits that fall outside the parental obligations."

McElrath v. Citizens & Southern National Bank, 229 Ga. 20, 189 S.E.2d 49 (1972)

- "sufficient amount of the income to provide for the grandchild's support, maintenance and education..." was mandatory direction to the trustee to use the income for the support, maintenance and education of the minor children regardless of the parental obligation of support

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"There's a lady who's sure all that glitters is gold..."
Led Zeppelin, "Stairway to Heaven", Led Zeppelin IV (1971)



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Implementation

- Ask for the request in writing
- Utilization of case managers, outside professionals
- Cross-discipline sounding boards
- "No, but..."
 - Approve different expenditure to free up beneficiary personal funds
- Document decision in writing
- Give a thorough explanation of "why"
 - Cite trust document, public benefits regulations, trust law, etc.
- Appeal process?

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[illegible]

"This the end, my only friend, the end...."
The Doors; "The End"; Live at The Matrix (1967)

Audience Submissions:

- Male beneficiary bought Victoria's Secret items frequently. When denied for sole benefit concerns, he replied "but it is for my benefit" to see his girlfriend wearing the items
- Replacing beneficiary's teeth with canine teeth
- Emotional Support Pig
- Over \$8,000 in power tools to build a \$200 chicken coop
- Purchase of a wife in Thailand
 - S5DI, Medicare and Medicaid - trustee did cost benefit analysis and determined loss of Medicaid was appropriate (spousal deeming)
 - Beneficiary was required to live in Thailand for a month (per Thailand regulations)
 - Outside resources to cover the wife's expenses
 - Beneficiary changed his mind after all this work was complete
- Pole dance pole in group home room
- Phone sex
- Crime scene clean-up
- Emotional Support Monkey

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[illegible][illegible]

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[illegible]

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