STETSON UNIVERSITY

on Special Needs Planning and Special Needs Trusts

Sex, Drugs, and Rock n' Roll!!:

Atypical Beneficiary Distribution Requests



1

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

Duty of Care/Prudence Act reasonably as any prudent person would

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. [3 Pickl.) 44 GB100]. "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, corasidering the probable income, as well as
the probable safety of the capitat to be invested:

Duty to Account
Accountings/reportings to beneficiaries, remainder persons, interested parties, courts, public benefits agencies, etc.

fi-du-cl-ary (fi-döö-shè-ë-è): n. "One, such as an agent of a prin a company director, that stands in a special relation of trust, confidence, or responsibility in certain obligations to others." Latin: fiduciarius, from fiducia - "trust"

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."

2

"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.

"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	

1

"T 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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"T 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 conside:

PSNT Board/Committee

Medical Professional

Social Worker

Mental Health Provider

Case/Care Manager

Trust Protector/Advisor

Family Members

Outside Counsel

Cet recommendation in writing

Note: Consider obtaining a HIPAA release from beneficiary

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



Support Options for Decision

BEST PRACTICE TIP: ALL DECISIONS SHOULD BE DOCUMENTED IN WRITING

Cross discipline advisors

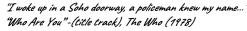
- Medical Professionals → Care/Case Managers
- Beneficiary Friends or Family or other Supports
- → Fellow fiduciaries
- → PSNT Board Committee

- 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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Support Options for Decision

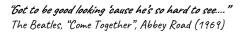
Use of disinterested Party

- 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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Expectation Setting

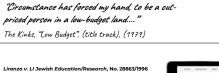
- Build bridges, not walls
- Struggles, incl. waiis
 Struggles with loss of control
 Common language development
- Common enemies?
 Parents/settlors
 Public benefits
- Optimal Outcomes

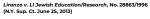
 - Short-term: passions, hobbies, goals
 Long-term: college, vacations, home purchase
 Document for future reference

4		
4		

"Circumstance has forced my hand, to be priced person in a low-budget land"	a cut-
The Kinks, "Low Budget", (title track), (1979)	RAARAN
Budgeting Disability Age Life Expectancy Public Benefits Lifestyle/Hobbies Employment (current or future) Cost of living Tax situation	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)
Education Investment knowledge and experience Risk Tolerance	 Future Funding/Inheritance BEST PRACTICE TIP: Discount heavily

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



Kinks

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

- Framework

 Appropriateness for individual

 Need
 Relation to disability
 Professional opinion
 Financial impact
 Budget
 Optimal Outcomes
 Federal vs. State laws
 Trust language review
 Case law
 Truste policy & procedure

- Trustee policy & procedure
 Values check

- Asks for a firearm for self-defense
 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

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



- Relation to disability
 Professional opinion
 Financial impact

- Budget Optimal Outcomes
- Optimal Outcomes
 Federal vs. State laws
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 procedure

- Benefits of owning a firearm

 Hunting to provide food or for recreation
 Personal Protection
 Collector's items
- Collector's Items
 Mu.S.C. \$92(9). 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)

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

- Appropriateness for individual Need Relation to disability
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- 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)

- Appropriateness for individual Need Relation to disability
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- Gender dysphoria causes severe depression, low self-esteem
- General 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

- 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 SPS (including the potential for co-existing psychiatric disorders and treatment that may be needed)

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

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.

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

- Appropriateness for individual Need Relation to disability

- Professional opinionFinancial impact

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

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

- Financial impact
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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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- Case law
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- Cooperative Federalism and State Marijuana Regulation, 85 U.
 Colo. L. Rev. 1105 (2014)
- o 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-WGY, March 25, 2015)
- Benefits
- Public Housing Agencies prohibit use of "illegal drugs" as defined at the federal level
- o SNAP benefits

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

Bob Dylan, "Rainy Day Women #12 and #35", Blonde on Blonde (1966)



- Framework

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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
- 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 selerosis pain

 Easement of pain, sevently 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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"But I would not feel so all alone...." Bob Dylan, "Rainy Day Women #12 and #35", Blonde on Blonde (1966) Framework • Appropriateness for individual • Need • Relation to disability • Professional opinion • Financial impact Financial impact Budget Optimal Outcomes Federal vs. State laws Trust language review Case law Trustee policy & procedure Values check

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

Framework

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- 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

"I loved you since I knew y	you, I wouldn't talk down to ya"
The Police, "Roxanne", Out	Handos d'Amour (1978)
Framework Appropriateness for individual Need Relation to disability Professional opinion Financial impact Budget Optimal Outcomes Federal vs. State laws Trust language review Case law Trustee policy & procedure Values check	morality, creativity, spontanetry lack of prejudice, Self-actualization lack of prejudice, acceptance of facts self-actualization self-active self-active confidence, achievement, respect of others, respect by others the self-active of others of the self-active of others the self-active of others of the self-active of others the self-active of the self-active of others the self-active of the self-ac

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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) Framework Appropriateness for individual Need Relation to disability Professional opinion Financial impact Budget Optimal Outcomes Federal vs. State laws Trust language review Case law Truste policy & procedure Values check Values check Framework 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 Internet Needs Trust of Collins, A04-1018, 2004 W. Z8SS079 (Minn. Ct. App. Dec. 14, 2004) **Alternatives: Internet **Strugtle policy & procedure **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) Framework • Appropriateness for individual • Need • Relation to disability • Professional opinion • Financial impact • Budget • Optimal Outcomes • Federal vs. State laws • Trust language review • Case law • Truste policy & procedure • Values check

Crosby, Stills, Nash & Young, Deja Vu (1970)



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- 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...."

- Framework

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Yusuf

- Yusur

 Syears 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

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

Incidental/Ancillary Benefit: PUMS 51 UIZU_UILT-3
 R3 550, 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

"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

 - tunds

 Document decision in writing

 Clive a thorough explanation of "why"

 Clite trust document, public benefits regulations, trust law, etc.
 - Appeal process?

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"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 is 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
 os SDI, 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
 Thones ex
 Crime scene clean-up
 Emotional Support Monkey

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THANK YOU!





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