

THE STATE OF NEW HAMPSHIRE  
 MERRIMACK, SS. 6<sup>TH</sup> CIRCUIT-PROBATE DIVISION-CONCORD  
 Re: Guardianship of  
 Docket No. 317-2011-GI-490  
MOTION FOR RECONSIDERATION

NOW COMES Jeanette Marino, by and through her attorney, Richard W. Heiser, and respectfully requests this Honorable Court to reconsider the Order of the Court issued on August 18, 2014. As grounds for this Motion, she states as follows:

1. A hearing was held on July 7, 2014 and a written decision with a date of August 15, 2014 was sent out by the 6<sup>th</sup> Circuit-Probate Division-Concord on August 18, 2014.
2. The ward, \_\_\_\_\_, did not attend the hearing on July 7, 2014 and no Waiver of Appearance form was filed with the court twenty-four (24) hours in advance as required under New Hampshire R.S.A. 464-A:8.
3. As \_\_\_\_\_ Payan did not attend and no valid Waiver had been provided to the court, the law requires that the matter should have been continued as required by New Hampshire R.S.A. 464-A:8.
4. Meg Miller, Director of the Peabody Home in Franklin, N.H., provided hearsay testimony over the objection of Ms. Marino's then attorney. New Hampshire R.S.A. 464-A:8IV states that the Rules of Evidence apply and no hearsay shall take place during a guardianship hearing.
5. Allowing the unsubstantiated hearsay testimony was a violation of due process of law as provided for in Part 1, Article

14 of the New Hampshire Constitution and the 14<sup>th</sup> Amendment to the United States Constitution.

6. In the decision, the court stated, "Based upon the information contained in the formal written complaint and testimony provided at the hearing the court finds that Ms. Marino violated standards of practice in performing her duties as Margarete Payan's guardian." It was error for the court to consider the formal written complaint, as it was never introduced into evidence. The court is bound to make its decision upon the testimony and admitted exhibits at the hearing.

7. In the Order of the Court the Judge wrote, "Finally, Ms. Marino acknowledges that Ms. [redacted] has requested to return to the Peabody Home, but Ms. Marino believes that Ms. [redacted] lacks insight into her condition and limitation relative to her requested return." Attorney Richard W. Heiser has listened to the recording of the hearing and believes that this statement is incorrect. Ms. Marino stated that since Ms. [redacted] has been at The Birches, Ms. Marino had visited with Ms. [redacted] twice and during said visits Ms. [redacted] could not recall her previous placement at Peabody Home, but requested to move to Long Island, which is where Ms. [redacted] resided for many years.

8. In the Order of the Court, the Judge wrote, "It is clear to the court that Ms. Marino demonstrated a callous disregard for the needs and requests of Ms. [redacted] particularly as it related to the importance of her friendship with Dot with whom she was inseparable and her high degree of comfort and trust with the staff at the

Peabody Home." Ms. Marino testified that she was well aware of the importance of the friendship with Dot, that Ms. Marino was making arrangements so that Ms. [redacted] could travel the short distance from Concord to Franklin to spend time with Dot and to make future arrangements regarding holidays. Ms. Marino's decision to move Ms. [redacted] to The Birches was not meant to end the friendship in any way, but rather to allow that friendship to continue while at the same time providing Ms. [redacted] with improved specialized services for her dementia.

9. In the Order of the Court the court stated, "The court holds that Ms. Marino violated multiple National Guardianship Association standards in numerous ways..." However, there was no testimony presented at the hearing regarding the National Guardianship Association standards.

10. It is clear from the testimony and the written Order of the Court that everyone involved believes that Ms. [redacted] lived for a number of years successfully at the Peabody Home with Ms. Marino as her guardian. No one testified that Ms. [redacted] health had suffered in any way due to some neglect or inattention by the guardian, Ms. Marino.

11. It is also clear from the testimony and the Order of the Court that in 2014 Ms. [redacted]'s dementia had increased and so Ms. [redacted] needs for ongoing care were increasing. Ms. Marino used that information, located a specialized dementia facility, The Birches, in Concord, N.H., a short distance away, and instituted the proper procedures whereby, as the court noted on June 9, 2014, a

Physician Clearance Form was completed and provided to The Birches and on June 17, 2014 two (2) representatives from The Birches arrived at the Peabody Home to interview Ms. . to see if she was appropriate for their facility.

12. Ms. Marino's desire to move Ms. to The Birches was based upon her personal, professional opinion that the specialized care provided at The Birches was qualitatively better than the care she would receive if she remained at the Peabody Home. There was no testimony that Ms. Marino benefitted in any way financially from such a move, or that the move was based upon any ill feelings between Ms. Marino and the Peabody Home. Ms. Marino testified that it was based upon the specialized services for the betterment of Ms. life.

13. The decision of the court seems to sharply disagree with the manner in which the transfer of Ms. from the Peabody Home to The Birches was carried out. "She (Ms. Marino) continues to maintain that it was appropriate to abruptly transfer Ms. to The Birches without discussing it with her given her mental status." Again, it is worth noting that it was not an abrupt transfer. Ms. Marino had given this matter consideration, had gone through the proper procedures of having medical information transferred to The Birches, and had individuals from The Birches interview Ms. in advance of the transfer. However, Ms. Marino did move Ms. to The Birches without discussing it with Ms. . However, the reason for this is that as a National Guardian, she is required to participate in ongoing education. In early Spring of 2014, one such

seminar was with Dr. Robert Santulli and the manner in which Ms. Marino carried out the transfer was in compliance with that ongoing education program. Ms. Marino's actions were not random and uncaring, in fact they were based upon sound principles provided to her in her profession. Perhaps to a layman, the transfer seems uncaring, but it is similar to if a physician sees someone with a dislocated shoulder, the doctor may have to cause additional pain in order to pull the arm in order to have the shoulder relocate. The purpose of a physician pulling that patient's arm is not to intentionally cause harm, but rather to minimize the long term pain involved if the shoulder is not properly relocated. Similarly, Ms. Marino was attempting to minimize the confusion and anxiety that Ms.

would experience by any move by reducing it to the one instance rather than having Ms. worry about it at the original location and then also worrying about it once she arrived at the new facility.

14. The removal of Ms. Marino as guardian for Ms. was excessive. Ms. Marino had been the guardian for approximately three (3) years, had helped straighten out the financial situation, had maintained Ms. in an appropriate living situation, but had come to realize that it was time to make changes for Ms. The removal of a guardian is usually reserved for someone who totally neglects the ward and/or places a ward in jeopardy. Ms. Marino was attempting to have Ms. obtain the best available services for her future life.

15. Ms. Marino is ready, willing, and professionally able to

continue as the guardian for Ms. ....

WHEREFORE, Jeanette Marino, by and through her attorney,  
Richard W. Heiser, respectfully requests this Honorable Court to:

I. Reconsider the Order of the Court with the Clerk's date of  
August 13, 2014, and reinstate Jeanette Marino as guardian for

Or, In The Alternative

II. Hold a rehearing at which the ward will be present or a  
valid Waiver provided, and testimony presented according to the  
Rules of Evidence as required by the guardianship statute.

III. For such other relief as the Court seems just.

Respectfully submitted,  
Jeanette Marino  
By and Through Her Attorney,

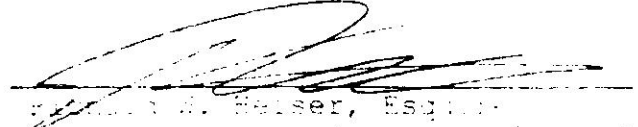


Richard W. Heiser, Esquire #1127  
Geiger & Heiser  
P.O. Box 6147  
Bendigo, NH 03303-6147  
Telephone: (603) 753-4361

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

DATE: 8/22/14

I hereby certify that I have this day mailed, postage prepaid,  
a copy of the foregoing Motion to the interested Parties.



Richard W. Heiser, Esquire

*Having considered the arguments raised  
in this Motion, the Court denies the requested  
relief for the reasons set forth in the  
objection filed in behalf of the Ward.  
The guardian has not  
otherwise indicated  
any errors of law or fact  
that would justify reconsideration or rehearing  
of the matter.*

ELIZABETH M. LEONARD

REGISTERED PROFESSIONAL LAWYER  
110 BROADWAY, BENDIGO, NEW HAMPSHIRE 03303