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Via E-Mail

Jilian Stengle

Judicial Branch Certification Board

Advisory Committee Members

Re: URGENT: Complaint by Sherry Lynn Johnston vs. Ginger Lott in the Guardianship of Willie Jo Mills, deceased.

Dear Committee Members:

On behalf of Sherry Lynn Johnston, I appear as counsel of record, having represented her in the underlying guardianship matter upon which this complaint is based. The State of Texas has entrusted its most vulnerable citizens' lives and well-being to court appointed guardians, giving them the power of life and death by their decisions. After personally enduring the unfathomable loss of Willie Jo Mills through neglect, incompetence and Ginger Lott's refusal to communicate and

cooperate with her daughters and/or granddaughter, Lott's violations of minimum standards is simply undeniable. In an attempt to highlight the most salient points Sherry made in her original complaints, I provide the following as a summary for your consideration. This is not new evidence. Instead, it is a grave concern which I believe the JBCC has yet to consider, but must.

The State of Texas enumerated specific minimum standards governing court appointed certified guardians and the consequences of violating those standards can be devastating. Ginger Lott's neglect and utter refusal to comply with the minimum standards to which she is mandated has created the unfathomable in depriving Lott of the ability to provide informed consent for Willie Jo Mills' medical treatment "as a matter of law." In the absence of informed consent, any medical treatment to which Mills was subjected is tortious, if not criminal battery in the absence of sufficient justification under Texas law. *See Texas Health and Safety Code*. The anguish this family suffered is unimaginable and should never be tolerated again by any guardian.

Lack of Informed Consent: Series of Medical Batteries

A basic concept governing medical treatment in all 50 States is the MANDATE of "INFORMED CONSENT" for any and all medical care provided, whether the decision is made by the individual or a surrogate decision maker, with exceptions made only in the most compelling circumstances—such as medical emergencies where a physician is compelled to intervene to save a person's life. **The**

failure to obtain informed consent renders any U.S. physician liable for negligence or battery and constitutes medical malpractice. Ginger Lott subjected Willie Jo Mills to countless medical batteries by her conscious indifference and refusal to comply with mandatory minimum standards, governing certified guardians in the State of Texas. Given that the cost of Ginger Lott's wilful neglect and derogation of mandatory duties was Willie Jo Mills' life—the Board/JBCC has a duty to enforce the law or ratify torts and potential crimes against its elderly and most vulnerable citizens.

It is indisputable that Willie Jo Mills was incompetent to make medical decisions. Willie Jo Mills' incompetence and inability to give informed consent was the entire basis of the guardianship she was subjected six years ago. These Letters render the guardian the ONLY person capable of providing informed consent for medical treatment of a ward—except in dire emergencies. Willie Jo Mills' tragic death demonstrates that time and time again, Ginger Lott failed and utterly refused to comply with the minimum standards to which she is held. The severity of Lott's violations cannot be understated because it deprived her of the ability to give informed consent for Mills' medical treatment, subjecting her to repeated medical batteries. Whereas expert testimony on the standard of care would be necessary to evaluate "informed consent," no expert testimony is required in the case of medical batteries

Letters of Guardianship not only authorize guardians to make potentially life altering medical decisions, but mandate them to do so. It is conceivable that a medical emergency could arise in which the guardian is deprived of sufficient notice to provide informed consent on behalf of their ward, but this should be extremely rare, if at all. Ginger Lott's refusal or neglect to meet the minimum standards to which she is held by Texas law was the rule rather than the exception in this matter.

Whereas “lack of informed consent” requires expert testimony, medical battery cases do not require expert witness testimony on the standard of care, because there is *no prior consent* to be judged. Ginger Lott's violations were so egregious that even a layperson can determine that Willie Jo Mills suffered medical batteries for which the Board/JBCC must act or become an accessory after the fact to the tort / crime by ratifying it. The minimum standards are meaningless unless they are enforced and accountability imposed.

Ginger Lott permitted a medical battery (tort / crime) to be committed against Mills by neglecting to adequately educate herself concerning Mills' medical history before making critical decisions. Mills has been nonverbal and mentally incapacitated since 2007. Lott's attorney insists that she does not have Mills' medical records. And Lott utterly refused to educate herself regarding Mills' health through the only persons who had sufficient information to provide informed consent on her behalf—her daughters and granddaughter. The medical batteries

committed against Mills are exacerbated by Ginger Lott’s intentional and persistent refusal to simply “get along” with her family members most intimately acquainted with her care—a far cry from the duty to facilitate positive relations with the ward’s family to which she is held.

There is not one incident which demonstrates even an attempt at civility with Cindy Pierce (Pierce), Sherry Johnston (Johnston), or Betty Jo Luckey (Luckey)(collectively “Mills’ family”). Instead, Lott’s actions demonstrate persistent acts of deception and hostility geared towards preventing any semblance of “relationship” with Mills’ family. Without this critical link, Lott had no basis upon which to provide informed consent for Mills’ medical treatment, subjecting her to batteries rather than protecting her. Among other mandates, Ginger Lott had a duty to be competent and well informed and no one was in a better position to assess the foregoing than Ginger Lott (Lott).

I. Failure of Appropriate Medical Care

Ginger Lott knew months before her “*emergency*” appointment—that was far from the emergency contemplated by Section 761—that Willie Jo Mills’ health was on a dangerous decline and her daughters were far better equipped than her to serve as guardian. Despite Lott’s inexperience and incompetence, she elevated personal interests over the best interests of Mills—in the pursuit of greed. Lott had a duty to know her limitations. Her experience consisted of 20+ years serving as the court

coordinator for Probate Court No. 4, with virtually no medical training or experience that would equip her to make life and decisions concerning Willie Jo Mills.

Ginger Lott knew that Willie Jo was a stroke patient who was largely non-verbal, in addition to being physically and mentally incapacitated. Lott had no means of effective communication with Mills to determine any facet of her medical history since the outset of this guardianship and her attorney insists that she never obtained Mills' basic medical records. This left Ginger with one option—to work with Mills' family members most intimately involved in the medical treatment for Mills. Sherry Johnston (Johnston), Mills younger daughter, was the person most intimately involved with her mother's care since 1993. Sherry also had the benefit of being single and living close enough to be a continuous presence by her mother's side. Without Mills' family as a resource, Ginger had no information upon which to make any medical decision and thus, could not provide informed consent “as a matter of law.”

Lott failed and refused to comply with multiple minimum standards, but primarily the duty to facilitate close relations with family (whether she liked them or not) as well as the duty to sufficiently educate herself concerning Mills' healthcare needs to make appropriate decisions. The evidence lies in her absolute inability to have acquired this information from any other source, utter neglect and conscious disregard of Mills' critical medical needs, which Lott knew or should have known

about. There is no evidence that Ginger Lott ever acted in a proactive manner, as opposed to “putting out fires” at the expense of Mills’ health. Willie Jo Mills failed to receive the most obvious medical care necessary for her disability—such as a Cardiologist given she was a stroke victim.

Countless bad decisions made by Ginger Lott to Mills’ detriment were so blatant, they simply cannot be denied. One such example is doing nothing as Willie Jo became further and further incapacitated in activities of daily living to the point where Willie Jo was unable to feed herself or hold a cup to drink. This left her at the mercy of her caregivers for every imaginable need. Willie Jo received almost no appropriate “non-emergency” medical intervention by Lott and literally starved to death as her emaciated body became increasingly handicapped in violation of Federal law. *Section 504 of the Rehabilitation Act of 1973 (Section 504)*. Section 504 mandates therapies be provided to those at risk of losing activities of daily living (ADLs). By virtue of David Dixel’s years of ensuring Mills had appropriate therapies to avoid losing critical ADLs, Ginger Lott knew (as his care manager and successor guardian) that Mills required these therapies, but discontinued them.

Countless times, Sherry intervened with desperate pleas for Ginger to simply listen to the family so that she might gain critical knowledge of her medical history—to no avail. Every plea fell on deaf ears. Ginger was callous and indifferent to Mills’ dire healthcare needs. She did virtually nothing as Willie Jo writhed in pain from

blood thinners which she had a history of complications with. Willie Jo almost died in 2011 as a result of complications with Coumadin and/or Plavix—and required 3-4 blood transfusions to survive. Another complication Willie Jo suffered when given blood thinners was excruciating muscular pain, recorded on video as Mills cried for help.

Prior to Ginger Lott's appointment and intentional acts to violate this standard, rather than placing Mills' interest above personal dislikes, Sherry was the very thread upon which Willie Jo's life hung. It was NEVER in Willie Jo's interest for Sherry to be banned from caring for her mother and the evidence proves that Lott's repeated bans on her visitation with Mills caused Mills to suffer more than anyone. Had Ginger possessed the insight to simply recognize her lack of competence or willingness to ensure Mills' best interests above her own, Mills would not have suffered the unconscionable batteries and anguish she was forced to endure.

While David Dexel served as guardian, relations were good until Mills health began to decline. Dexel had the wisdom to recognize he was not the expert on Willie Jo, allowing Sherry to ensure her mother's medical needs were met. For months on end, Sherry visited daily and brought nutrition supplements such as fresh juice for her mother's nutrition—clearly needed due to the neglect Willie Jo endured while surrounded by medical professionals at up to \$8000 per month. Willie Jo paid

approximately \$218,000 as Ginger continuously neglected her needs in favor of combat with her family.

Ginger's Definition of Emergency:

Self Interest as opposed to Willie Jo's dire health needs.

One of the most poignant events demonstrating Ginger's concern occurred on or about April 20, 2014—when Ginger acknowledged that Willie Jo was in the midst of a medical emergency by calling 911 and having her transported by ambulance to Methodist Hospital *only to sign herself in* (without capacity to do so as a matter of law) for dire medical treatment. Ginger Lott demonstrated a complete lack of regard for Willie Jo's life by failing to ensure that her complete medical history (unshredded) was included for physicians who had never treated her. Ginger considered the secret September 2013 hearing—in which she was appointed guardian—an emergency sufficient to deny family members notice, with knowledge that her actions would deprive her daughters of guardianship through greed and deception. While purporting to negotiate with Sherry and Cindy's lawyer, Ginger participated in a secret hearing for her appointment, knowing that Dexel's resignation was not remotely an emergency for which her daughters should have been denied notice and the opportunity to object in favor of their superior right to serve.

Inconceivably, Ginger revealed her complete disregard of Mills' true medical emergencies by repeated failures to appear to even admit Mills to hospitals or

consent to her care. Sherry rushed to the hospital to assist her mother and Ginger never showed. The only person capable of consenting to medical treatment as a ward of the State—Ginger Lott—no where to be found. Ginger’s utter disregard of her legal duties left Willie Jo in the position of being subjected to medical battery, which is a tort and a crime. Willie Jo was incapable of consenting to medical treatment and yet, signed herself into Methodist Hospital. Sherry was by her side once again able to provide a complete medical history for doctors to treat her and avoid life-threatening complications. Sherry reminded Ginger of the ludicrous determination that Willie Jo be denied food to avoid the unconfirmed risk of aspiration when to do so would result in her death by starvation?

Sherry warned Ginger on April 20, 2014 that her mother appeared to have a UTI by virtue of the obvious “pus” in her urine—a fact Ginger attempted to cover up. Later, physicians confirmed Sherry’s observations to be accurate—at which time Ginger became defensive and made excuses for her prior denial of the facts. In response to her disgust of the maltreatment of her mother, Sherry informed Ginger that Willie Jo had bed sores and asked why she intentionally avoided informing the family that Mills was dangerously dehydrated and malnutrition, demanding information on her “plan” to attend to her mother’s known medical needs going forward. Sherry had every right to this information and Ginger’s failure to provide it to the family beforehand is inexcusable neglect and utter disregard for Mills’ life.

Ginger's defensive posture, placing her risk of liability over the very life of Mills is the outrageous act of causing the ambulance Sherry called in the midst of an emergency—to be turned away when Ginger called “her own ambulance” to transport Willie Jo approximately one hour later with no rational excuse to delay urgent medical intervention. Ginger consistently placed Willie Jo's life at risk for trivial reasons and created the illusion that Sherry was a trouble maker, as opposed to a distressed daughter, screaming for help to save her mother's life.

Sherry knew that a mere confrontation of Ginger stood to deprive her of all contact with her mother and willingly endured the retaliation because she saw no other option. Sherry was punished and defamed for doing nothing more than asking the guardian to do her job. Simultaneously, her hands were tied by the court appointed guardian, who watched Willie Jo starve to death slowly because she lacked the decency to admit that she was in over her head—or the humility to go to any length to protect Mills' life.

May 18, 2014: Pleas to save Mills' life were ignored

Unable to even reason with Ginger Lott due to extreme retaliation and hostility, Sherry contacted her attorney, Howard Reiner, to plead for him to intervene. About the same time, Ginger and Howard met to discuss Mills' health. Yet again, both Lott and Reiner appeared almost solely concerned with covering up the neglect, rather than saving her life. Reiner threatened Sherry's lawyer in criminal

ways and stormed through the court screaming accusations of wiretapping, which he knew false, given he and Ginger consented to have a “granny camera” in Mills’ room. Ginger chose Hampton Assisted Living, 48 miles from Sherry’s home, when no less than 12 skilled facilities were available for Mills that would have ensured she was close to her daughters and extended family. Ginger ultimately conceded to move Willie Jo close to her family, but she was near death by that time and her action was again—a clear move to appease her daughters and avoid the consequences of her gross neglect and recklessness.

**Sherry’s pleas for Ginger to intervene
and work with Mills’ family for her care**

Sherry Johnston wrote Ginger in June of 2014 to rescue Mills from a dangerous plummeting weight loss through mere nutrition that proved effective in the past. In November of 2012, David Dixel gave Sherry wide authority to provide nutrition to her mother through organic juicing, which supplemented her diet with fruits and vegetables she was not receiving by mouth. From November of 2012 through May of 2013, Sherry daily juiced Willie Jo with organic fruits and vegetables and she gained 40+ lbs. Sherry provided it at no cost and actually fulfilled the role that Silverado Staff was paid for by sitting by her mother’s side to ensure she received nutrition. Mills’ skin glowed and her health dramatically improved. Mills improved so radically, her daughters were able to take her shopping—a simple

pleasure she was unable to engage in for over 8 months.

With no rational justification other than avoiding legal liability for what appears to be a feigned risk of aspiration, Lott cruelly refused Sherry's simple request to juice her mother. The result was predictable. Mills' weight again dropped 40 lbs. and she became increasingly ill, losing ADL's necessary for the simplest of daily tasks. Sherry watched elderly patients die from completely avoidable UTI's due to inadequate hydration. Silverado Senior Living, was chronically understaffed for profits. Time and time, Mills' dire health care needs were disregarded and came in second to the guardian's need to cover up neglect. Lott simply refused to acknowledge her incompetence, which was the source of conflict with Mills' daughters, who could hardly sit back and watch their mother die.

September 8, 2014: Dying for a drink of water

Ginger admitted that she knew nothing about Emeritus denying fluids to Mills on the basis of the risk she might aspirate to the point she was permitted only spoonfuls of water, as she was dying for water. On or about September 16, 2014—Willie Jo is delirious when Sherry arrived at Emeritus. Sherry asked Nicole, the sitter, how long her mother had been like this? Nicole responded “you are going to have to talk to someone else—the nurse or Ginger” and refused to answer her question, stating that she was delirious the day before when she arrived. No medical intervention was provided to her for delirium by the Nurses, who told Sherry they

could not speak to her about her mother's care. Sherry was referred to Ginger for questions, who refused to answer them.

Sherry asked Ginger what was wrong with her mother and in a rare response, Ginger appeared within 30 minutes. Ginger said that Willie Jo was going through withdrawal from medication, but declined to identify the medication. Sherry asked Ginger why she failed to contact the family to alert them of the emergency, explaining the hysteria a daughter feels witnessing her mother suffering. Ginger did nothing to address the delirium and left. It was not until 6 am on September 17, 2014 that Sherry got a "text message" stating that her mother had been taken to Kingwood Hospital—with no further explanation from Ginger.

Sherry immediately went to Kingwood Hospital to see her mother and provided a thorough medical history, which physicians lacked. Sherry alerted Ginger that her mother had a urinary tract infection, which was obvious after seeing that Willie Jo was not receiving adequate hydration via the many bottles of water that remained unopened. Mills had a sufficient history of UTI to recognize the symptoms immediately, notwithstanding that UTI's are common in the bedridden elderly, that Ginger should have automatically suspected it.

Given that Ginger Lott admitted to Sherry knowing that Willie Jo is "prone to get" UTI's, there is no excuse for her failure to notice, which was by her own definition--recurrent. Kingwood diagnosed her with malnutrition, urinary tract

infection, potassium overload, iron deficiency, dehydration, COPD, diabetes (which Willie Jo never suffered for 87 years to the family's knowledge). Willie Jo was so dehydrated that she was on the verge of renal failure, if not already within. She was given an I.V. with nutrition and fluid and improved almost immediately. Antibiotics appeared to improve her delirious state of mind, but Willie Jo should never have been neglected to the point of near death before Ginger saw fit to intervene.

Delirium is entirely preventable and a sign of gross neglect. It should not occur if an elderly dementia patient is adequately hydrated and cared for. It is critical to intervene at the first signs of delirium in the elderly to avoid death. Willie Jo Mills died 10 days later. Willie Jo was not just delirious or dehydrated, but essentially wasting away before Ginger's very eyes with malnutrition and a host of spiraling critical health problems caused by her failure to intervene earlier. Ginger hired Nicole and Andrea to serve as "caregivers" at a cost of \$1200/week, which was on top of the \$8000 per month charged to Willie Jo for skilled nursing. Willie Jo starved to death and suffered multiple organ failure while in skilled nursing, with a guardian and "caregivers" chosen by Ginger.

Sherry Johnston babied her mother and attended to every last detail of her medical care when Willie Jo was allowed to receive her comfort and support by the prior guardian. This ended when Ginger was appointed. Ginger not only was "no where to be found" in the face of several "actual" medical emergencies, but

demonstrated conscious indifference to her pain, suffering and death when she was the only person legally authorized to intervene. Ginger Lott had a score to settle with Sherry Johnston and proving her superior authority was more important than Willie's Jo's life. Ginger was reckless and absent and Willie Jo spiraled to her death. All of this was entirely predictable to even the most incompetent guardian. Ginger tied their hands and threatened them to prove a point. The foregoing demonstrates to an irrefutable degree that Ginger Lott is a danger to vulnerable, elderly and disabled individuals who are incapable of speaking up for themselves via her indifference to the need for competence and refusal to comply with mandatory duties to facilitate positive close relationships with family members. Had Ginger complied with either of these minimum standards, Willie Jo Mills might be alive today, but certainly would never have suffered needlessly as she did under her watch. Ms. Johnston pleads for the Board to take appropriate action against Ginger Lott commensurate with the damage inflicted so wilfully upon Johnston, Pierce, Luckey and Mills, the ward she was legally mandated to protect.

Regards,

/s/ Candice Schwager

Candice Schwager

