



J. Jordan# 2
September 17, 2010

NO. 08 0327
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE PATIENTS PROPERTY ACT
R.S.B.C. 1996, CHAPTER 349 AS AMENDED

-AND-

IN THE MATTER OF KATHLEEN PALARMARK, PATIENT

AFFIDAVIT

I, JOHN E. JORDAN, barrister and solicitor, of 704-880 Douglas Street, Victoria, British Columbia, MAKE OATH AND SAY THAT:

1. I am a member in good standing with the Law Society of British Columbia. I have personal knowledge of the facts and matters hereinafter deposed to except where expressly stated to be on information and belief and whereso stated, I verily believe them to be true.
2. I am an associate lawyer at the law firm of Straith and Company in Victoria. I was called to the bar in 1989. I practice as a solicitor in the areas of estate and trust planning, wealth preservation and elder law.
3. In July of 2007, Mrs. Lois Sampson approached me concerning her mother, Kathleen Palamarek.
4. Mrs. Sampson advised me that her mother was living in the extended care ward at the Saanich Peninsula Hospital and had been there for some time. Mrs. Sampson expressed her concern to me that she felt her mother should not be staying in the Saanich Peninsula Hospital. She also expressed concern to me that her mother might be on medications while at Saanich Peninsula Hospital that may be adversely affecting her physical health.

5. I first met Mrs. Palamarek at the Saanich Peninsula Hospital on July 13, 2007. Mrs. Palamarek told me that she had been admitted to Saanich Peninsula Hospital approximately six months before because she had fallen in her home and sustained injuries. There was no place in the hospital where we could talk privately and so we decided that we would make an appointment to confer outside the hospital setting.
6. In this visit, Mrs. Palamarek told me, and she was quite adamant about it, that there was no reason why she could not return to her home at 10324 Bowerbank Road in Sidney, B.C. and that she had lived there for many years with her husband until his death in 2001. She was able to tell me that she was 84 and her birthday was July 15th of that year when she would turn 85. She could recite the names of her three sons and one daughter and she knew the place of her birth as Smoke Lake, 65 miles northeast of Edmonton, Alberta, and that she came to Victoria with her husband who was in the armed forces at the time.
7. I noted that Mrs. Palamarek seemed not to have a good short term memory in that first meeting.
8. In my opinion, she was clearly uncomfortable in the Saanich Peninsula Hospital setting.
9. I next met with Mrs. Palamarek at a restaurant in Central Saanich on Wednesday July 26, 2007. We discussed, among other things, her life history including her family. Mrs. Palamarek said she was being given medications but did not know what they were and they made her feel lightheaded and disoriented. She was specific however, that she wanted to see what medications she was on but said that the staff at Saanich Peninsula Hospital were ignoring her requests.
10. Mrs. Palamarek could remember that she had signed a Power of Attorney in favour of her son, Ralph and her son, Ernie, because "one is older and one is younger."
11. I asked her if she would like me to help her find out why she was being kept in the hospital against her wishes and what her drug regimen was and she said yes, that she would. I said I would prepare the necessary documents for me to be able to help her and agreed to meet at a later date.
12. My next meeting with Mrs. Palamarek was August 8, 2007 off the premises of Saanich Peninsula Hospital at a local restaurant. Her daughter, Lois was present for part of the discussion. I reviewed my meeting with her of almost two weeks prior. She remembered the meeting but could not specifically remember that we had talked about. I reviewed what we had talked about and asked her whether she still wanted me to represent her as a lawyer in finding out why she was being held at Saanich Peninsula Hospital, when she would be able to return to her home with assisted care and what drugs were being given to her. She said that, indeed, she wanted to know, and so I presented her with two authorizations which I had typed in my office, two signed copies of which are attached as

Exhibit "A" to this my affidavit. Mrs. Palamarek read both of these documents and, after reading them stated "I do not see anything wrong with signing that."

13. In my meeting with her on August 8, 2007, Mrs. Palamarek's was concerned was that, in signing these two directions, it would create problems with her two sons, Ralph and Ernie. Mrs. Palamarek deliberated for quite a long time before signing the two directions.
14. At all times, Mrs. Palamarek discussed her health and physical care in an intelligent and reasoned manner and in the course of these discussions asked relevant questions as to why these drugs were, in the opinion of the hospital staff, needed, which demonstrated to me that she was able to think rationally and clearly on the subject at hand.
15. I believe that Mrs. Palamarek signed the two directions voluntarily knowing the possible effects that it would have on her family situation.
16. In my 22 years of working with senior citizens as a lawyer, and the 10 years previous to that I acted as trust officer with a national trust company doing estate administration and planning for senior citizens, I have had considerable experience in dealing with people who have various degrees of dementia and loss of memory. At the time Mrs. Palamarek signed the two directions referred to above, she was most disturbed that she was being kept in a hospital setting against her wishes and she, in clear and concise terms, voiced to me her concern about what drug regimen she was on and why she could not be released to her home to live. She realized that if she returned home, she would need assistance and could not now live independently. She was rational and thoughtful in expressing her ideas. However, it was obvious she was experiencing periods of loss of memory of short term events.
17. At no point that I saw her, either in the Saanich Peninsula Hospital, the two meetings outside the Hospital in July and August of 2007 or any subsequent meetings I have had with her, would I ever characterize Mrs. Palamarek as delusional. She was down to earth in my conversations with her, and, to the extent that her memory allowed, was able to give a rational analysis of her situation and give sound reasons for questioning the reasons underlying her drug regimen, both at Saanich Peninsula Hospital and at the Lodge at Broadmead. She was alert and engaging in her conversations with me and showed good awareness of her surroundings.
18. On October 18, 2007 I met with Mrs. Palamarek in person, alone, and discussed her situation at the Saanich peninsula hospital and her continued hospitalization, generally. I asked her if she wanted someone to represent her interests and she replied in the affirmative. She signed an abbreviated retainer letter which is attached as **Exhibit "B"** to this affidavit.

19. Mrs. Palamarek has voiced concerns many times to me over the past three years that she was very concerned her family were fighting over her financial and health affairs. Mrs. Palamarek has stated on several occasions that she wished that her children would work together.
20. I visited and met with Mrs. Palamarek approximately 15 times between July, 2007 and April, 2010, so I got to know her well. We would usually start off a visit by talking about current events. Mrs. Palamarek is an avid reader and was always reading her newspaper or a book. When I met her she could give a cogent and informed opinion about current events of the day. She would discuss these events and ask relevant questions arising out of our discussion which to my mind indicated her thought and reasoning processes were functioning well.
21. Mrs. Palamarek was hesitant to talk about private family matters. However, she did enjoy giving an extensive and detailed account of her family history and the life she had with her husband, expressing details of where they moved and what they worked at in the places they lived.
22. In virtually all of my visits with Mrs. Palamarek, the subject of her house and the management of her finances came up. She told me that her son, Ralph, took care of her financial affairs but that he never gave her any substantive details of the status of her financial affairs, despite her repeated requests of him to provide her with detailed accounts. This frustrated her. Mrs. Palamarek over time opened up to me and we enjoyed many visits where we had relaxed conversations about all sorts of topics.
23. It is obvious that Mrs. Palamarek's ability to communicate and to understand what is said to her is severely compromised by her rather severe hearing impairment. This requires patience and attention on the part of the other person to her needs. The person talking to her must enunciate clearly so she can hear what is being said. Often if one does not take extra effort to insure that she hears what you are saying, she will not respond, because she has not heard or will respond in a way which shows she did not hear the substance of the remark made to her.
24. On November 3, 2008 I met with Mrs. Palamarek in my office with a seniors advocate, Mrs. Carol Pickup. The following is a portion of a transcript of my conversation with Mrs. Palamarek:

"Now-what I would like to know is- are you happy, quite happy living where you are right now [The Lodge at Broadmead]?"

Not really.

Where would you rather live?

Well I was planning on living with my daughter.

And where would you live with your daughter if you could?

Well wherever she is living. Hehehe.

Ok.

And why do you want to live with your daughter if you could?

Because she is my daughter, she understands me and I understand her. Hehe. We have good communication.

I see. Do you think she will look after your best interests? Your health?

Yes oh yes.”

25. On another visit I had with Mrs. Palamarek, in the company of Carol Pickup and we talked about where Mrs. Palamarek would like to live and whether she would like to continue living in the Lodge at Broadmead. She said she would not. She said she was not treated properly there. She felt that there were some good staff there but others treated her in a condescending fashion and spoke behind her back which she did not like. She stated on a number of occasions, without being prompted, that she would like to move back to her home and have Lois live with her in her home. I asked her what she would do if both her daughter, Lois, and her son, Ralph, were to stay with her in her home. Mrs. Palamarek said that both of them would be welcome to stay if they could work out their living arrangements between themselves. In saying so, she told me that she was not sure that this would be practical because Ralph and his wife, Donna work full time and could not look after her so Lois and her husband, would be left to do so. She said she was happy with this.
26. Mrs. Palamarek, however, stated that she was fearful that if Lois and her husband went to live with her in her home, that Ralph and his brothers would no longer come and visit her. Mrs. Palamarek told me she did not want her sons not to visit her, and this gave her cause for great concern.
27. In another meeting I had with Mrs. Palamarek in the presence of Carol Pickup at the Lodge at Broadmead, I spent an hour and a half with her on September 28, 2009. We discussed if she wanted to go out for tea to a place outside the Lodge. She agreed that she would like to do so. She put on her windbreaker and we three proceeded past the nursing station to the front door of the Lodge. As soon as we got to the nursing station, Carol Pickup told the nurse at the nursing station that we were going out for tea. The nurse at the desk asked Mrs. Palamarek if she wanted to go out. Mrs. Palamarek stopped in her tracks and stated immediately that “I do not think I will go”. My immediate impression

was that Mrs. Palamarek did not want to go because of what the nurse had said. This incident stood out in my mind because of the instantaneous reaction of Mrs. Palamarek when this nurse spoke to her. My opinion from this is that Mrs. Palamarek felt distinctly intimidated by this particular staff member of the Lodge not to leave the Lodge.

28. We then went to sit in the sunroom at the Lodge. We started discussing the finances of Mrs. Palamarek. She knew that the house was still hers, but had no idea about her finances. She did not understand what had happened to her money or bank accounts and this was clearly a worry to her. She told me that her son, Ralph, has authority over these matters because he has the Power of Attorney. She stated that she felt her son Ralph had been reluctant to allow her to visit her home and she also went on to say that she wanted to go to her home and sort through some of her possessions and take some things with her.
29. Other meetings that I have had with Mrs. Palamarek largely reflect Mrs. Palamarek's concerns as expressed to me in the meetings I have referred to in this affidavit.
30. In my opinion, Mrs. Palamarek has a significant, short term memory deficit. This memory deficit clearly compromises her ability to marshal relevant information in making decisions or opinions because she is unable, at any one point in time, to remember all relevant information and events in order to make an informed decision. This is significantly exacerbated by her hearing loss.
31. At no time have I experienced any delusional thought pattern, or behaviour in Mrs. Palamarek. She has at all times, within the scope of her memory, expressed her opinions in a lucid fashion and is clearly able to formulate opinions based upon the facts that she is aware of. Mrs. Palamarek is a lady who can engage in rational dialogue and spontaneous conversation. When in possession of the relevant facts, Mrs. Palamarek is clearly able to express her preferences, ideas and opinions without prompting from another party.
32. I do believe that Mrs. Palamarek wants to keep a good relationship with all her children especially her daughter, Lois Sampson.
33. I have met with Mrs. Palamarek on many occasions when her daughter, Lois Sampson has been present. I have viewed Mrs. Sampson's attitudes and behaviour toward her mother to be nothing but that of what one would expect from a loving, caring daughter. I do not believe that Mrs. Sampson has been "putting on a show" for my benefit and that her care for her mother is genuine.
34. I have only observed from Lois Sampson and her husband, Gil, careful consideration of her mother's needs. I especially refer the temporary stay at the Sampsons' residence on Pandora Street when Mrs. Palamarek chose to come and stay with her daughter, Lois, on or about October 29, 2008 which stay ended with an involuntary apprehension under the

Mental Health Act. When I met Mrs. Palamarek in her daughter's condominium, she was enjoying the relaxation of the home atmosphere while having tea and cookies with her daughter.

35. It is my impression that Mrs. Palamarek was relaxed and enjoying her daughter's apartment and was aware of the change and was quite relieved to be away from the Lodge. I saw nothing in Mrs. Palamarek to suggest that she was suffering from any emotional problems or needed medical attention other than continuing her program of medications that she had been undergoing at the Lodge and ongoing visits to a physician.
36. I have never seen any indicia of anger, or abusive behaviour exhibited by Lois Sampson or her husband, Gil towards Mrs. Palamarek. I have seen only Mr. and Mrs. Sampsons' acting on their concerns about what are the best interests of Mrs. Palamarek.
37. I understand that from the material in this proceeding that there have been allegations that Mrs. Sampson has and is suffering from schizophrenia. These allegations are absolutely untrue.
38. From what I have seen in my many meetings with Mrs. Palamarek in the presence of Mrs. Sampson, Mrs. Sampson has solely her mother's best interests at heart in applying for a committee for the person and affairs of her mother.

SWORN BEFORE ME at the City of Victoria,
 in the Province of British Columbia, this
 17th day of September, 2010.

 A Commissioner for taking Affidavits in the
 Province of British Columbia

JERRY MCLEAN
 Solicitor
 704 - 880 Douglas Street
 Victoria, BC V8W 2B7

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 John Edward Jordan
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TO MY HEALTHCARE PROVIDERS:

RE: KATHLEEN PALAMAREK

I KATHLEEN PALAMAREK, currently of the Saanich Peninsula Hospital, 2166 Mt. Newton X Road, Saanichton, British Columbia, V8M 2B2, being of sound and disposing mind, hereby **DIRECT** that any healthcare giver of mine, including any physicians, psychologist, psychiatrist, including geriatric psychiatrists, healthcare worker, nurse or social worker shall provide to my daughter LOIS SAMPSON any and all existing medical information, including any reports respecting my physical and mental health.

Yours truly,

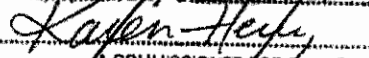

KATHLEEN PALAMAREK

Dated this 8th day of August, 2007.



WITNESS E. JORDAN
Barrister & Solicitor
Stevenson Luchias & Legh
Suite 300 - 848 Courtney St
Victoria BC V8W 1C4

This is Exhibit "A" referred to in the affidavit of JOHN E. JORDAN sworn before me, at VICTORIA, B.C. this 18th day of JANUARY 2008


A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

This is Exhibit "A" in Affidavit # of John E. Jordan sworn before me at Victoria, B.C. this 17 day of September 2010

Name:
A Commissioner for taking Affidavits within British Columbia

TO WHOM IT MAY CONCERN:

RE: FINANCIAL AFFAIRS OF KATHLEEN PALAMAREK

I KATHLEEN PALAMAREK, currently of the Saanich Peninsula Hospital, 2166 Mt. Newton X Road, Saanichton, British Columbia, V8M 2B2, being of sound and disposing mind, hereby DIRECT that my daughter LOIS SAMPSON, shall be given full and complete financial disclosure of all my assets, income, income tax information, including all my banking affairs by (1) any person or entity having knowledge or records of my finances, and by (2) my son, RALPH PALAMAREK and my son ERNEST PALAMAREK who are the agents I have appointed under a general Power of Attorney.

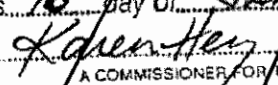
I also DIRECT my said agents named under the said Power of Attorney, namely, my son, RALPH PALAMAREK and my son ERNEST PALAMAREK or any other person or entity having a true copy of such Power of Attorney to provide my daughter, LOIS SAMPSON with a true copy of the aforesaid Power of Attorney that I have granted to my son, RALPH PALAMAREK and my son ERNEST PALAMAREK.

Yours truly,


KATHLEEN PALAMAREK

Dated this 8th day of August, 2007.


WITNESS
JOHN E. JORDAN
Burrister & Solicitor
Stevenson Luchies & Legh
Suite 300 - 848 Courtney St.
Victoria BC V8W 1C4

This is Exhibit A referred to in the affidavit of John E. Jordan sworn before me, at Victoria B.C. this 15th day of JANUARY 2008

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

This is Exhibit "A" in Affidavit # John E. Jordan sworn before me at Victoria B.C. this 17 day of September 2007
Name: _____
A Commissioner for taking Affidavits within British Columbia

TO WHOM IT MAY CONCERN:

RE: KATHLEEN PALAMAREK

I HEREBY RETAIN, AS MY LEGAL REPRESENTATIVE and LAWYER, JOHN EDWARD JORDAN, of the LAW FIRM OF STRAITH AND COMPANY.

Therefore, this letter will serve as your good and sufficient authority to permit JOHN EDWARD JORDAN to deal on my behalf with respect to any matter touching upon my legal rights as it pertains to my person.

Dated this 18th day of October, 2007.


KATHLEEN PALAMAREK

This is Exhibit "B" in Affidavit # of
John E. Jordan
sworn before me at Victoria, B.C.
this 17 day of September, 2010

Name:
A Commissioner for taking Affidavits
within British Columbia