

## Facts About Ryan Morris

Ryan Morris is under an order of conservatorship issued by the Riverside County Superior Court in case no. MCP 1100783. The case is currently scheduled for a hearing in Department 4 on February 9, 2018 regarding a request to remove Sean Spicer as Ryan's conservator. The following facts are taken from various court and school records.

1. Ryan Morris-Spicer has an identical twin, Ronald Moore. Ronald was born on January 9, 1994, just before midnight. Ryan was born a few hours later, on January 10, 1994. They both turn 24 in January 2018.
2. Ryan was born with significant developmental disabilities. He was diagnosed with cerebral palsy, moderate intellectual disability, and schizophrenia.
3. Ryan's birth parents were Valerie Mukai and James Moore. Both were deemed incompetent due to mental health issues. Ryan became a dependent of the Orange County Superior Court. He was placed in foster care and was subsequently adopted by his foster parent, Michelle Morris.
4. Just prior to Ryan turning 18, his adoptive mother Michelle and her brother Gregory Morris filed a petition in the Riverside County Superior Court seeking an order appointing them as co-conservators of the person of Ryan. The petition alleged that Ryan had cerebral palsy, epilepsy, schizophrenia, acute asthma, and cognitive delay. It alleged that he needs assistance in all activities of daily living. It further alleged that "Ryan is unable to think abstractly or manage money."
5. Ryan was placed under an order of general conservatorship, effective January 10, 2012 (the day he turned 18). Michelle and Gregory were designated co-conservators, giving them the "same authority as a parent having legal custody of a child . . ." The Probate Code permits such a delegation of authority to guardians of a child under the age of 18. (Prob. Code Sec. 2108)
6. At the time Ryan was first placed under an order of conservatorship in 2012, a medical doctor found that Ryan had major impairments: (1) as to orientation (time, place, and situation); (2) ability to remember (short-term memory and long-term memory); (3) ability to understand and communicate; (4) ability to reason using abstract concepts; and (5) ability to plan, organize, and carry out actions in his own rational self interest. The doctor also found that Ryan experienced unwanted compulsive thoughts and compulsive behavior. These deficits were found to be constant and not to vary substantially in frequency, severity, or duration.
7. A petition filed by co-conservator Michelle in December 2013 sought removal of Greg as the other co-conservator. It alleged that in addition to the conditions noted in paragraph two above, Ryan "is emotionally fragile."
8. On February 19, 2014, after Gregory resigned, Susan Bird-Santo replaced him as co-conservator of Ryan. That order continued to give the co-conservators the "same authority as a parent having

legal custody of a child . . . .” That order found that Ryan “is substantially unable to manage his or her financial resources or to resist fraud or undue influence.”

9. A “Level of Care” determination filed by the co-conservators with the court on June 24, 2014, stated: “Ryan doesn’t have safety awareness. He will wake up in the middle of the night and take off, thereby requiring constant supervisor throughout the nights.”

10. On October 11, 2014, Ryan (who was then 20 years old) married Sean Spicer during a ceremony performed in California. The ceremony was performed by co-conservator Susan Bird-Santo. A video of the ceremony is available on YouTube. (<https://youtu.be/lb5WdRSPg0Q>) The video depicts Ryan as being confused and reluctant. At one point in the ceremony he thought that it was a baptism. He had to be coaxed into putting the ring on Sean’s finger. It did not appear that he understood the vows he was asked to repeat.

11. Sean is 18 years older than Ryan. They met when Ryan was 17 and the courtship began when Ryan was either 17 or 18. Sean had been an employee at the foster care home operated by Ryan’s adoptive mother.

12. As a result of this marriage, Ryan lost his benefits under SSI and his benefits under Medi-Cal. This was a consequence of the marriage due to the fact that Sean’s level of income was deemed available to Ryan, thus making him ineligible for these benefits – benefits he was receiving prior to the marriage. Sean made \$400 per week working for a trucking company. After the marriage, and apparently even several months before the marriage, Sean and Ryan lived with Sean’s parents in a trailer in a mobile home park.

13. In July 2015, a petition was filed seeking an order to establish a limited conservatorship for Ryan, asking that Sean Spicer be appointed as Ryan’s limited conservator. The petition alleged that Ryan is unable to support himself, to find or provide clothing, food, or shelter for himself, and has a lack of funds. Supporting documents declare that Ryan is prone to undue influence and does not have a concept of danger. The order was granted on October 28, 2015.

14. An individualized education report (IEP) was issued by Ryan’s special education program on September 29, 2015. The report noted developmental delays, low cognitive abilities, cerebral palsy, seizures, and emotional disturbance. His health conditions include epilepsy, ADHD ring of fire, cerebral palsy, asthma, autistic features, bipolar disorder.

15. A companion report (Determination for Need of Triennial Review Evaluation) filed with the IEP indicates that Ryan’s adaptive skills/independent behavior are in the “very low range (age equivalent of 5 years, 3 months.) His academic skills are at the Kindergarten level in reading, math and writing. His receptive language skills are at a 4 year, 5 month age level. His expressive language skills are at a 3 year, 11 month age equivalency. He was reported to have serious behavior problems that include withdrawal, inattention, hurting himself, socially uncooperative and offensive behavior, disruptive behavior, destructiveness to property and hurting others. About once a month his aggressiveness rises to a level where he is considered a danger to himself or others.

16. A report filed by Charles Krolkowski indicates that after a meeting of various parties ended, Ryan made the following statements in his presence: (1) that Ryan is afraid of his husband Sean; (2) that Sean pushes and yells at him repeatedly; (3) that Ryan must obtain permission from Sean to communicate with his biological family; (4) that Ryan would prefer to stay with his biological family rather than go with Sean on long-distance road trips associated with Sean's job as a truck driver; and (5) that Sean told Ryan to say certain things at the meeting, including that he is scared of his twin brother Ronald and his aunt Monica. Charles is the attorney for Ryan's twin brother Ronald.

17. In September 2016, the Office of Public Guardian issued a report about Ryan. It stated that according to an evaluation by the Inland Regional Center, Ryan "has the mental capacity of a 5-6 yr-old Kindergarten level." The investigator interviewed Ryan's aunt Monica. She expressed concern that Ryan was being isolated by Sean, that Ryan's public benefits had been terminated, and that Ryan was not receiving the services he needs. She stated that if appointed as Ryan's conservator, she would provide Ryan with a schedule that includes "physical therapy, speech therapy, reading/writing skills, equestrian therapy, and meal/relaxation times." During the interview, the investigator was shown a video clip of the marriage ceremony of Ryan and Sean. According to the investigator: "During this video it was evident that Ryan Morris had no comprehension of the marriage ceremony and what he was really getting himself into. At one point when Ryan is asked to place the ring on Sean's finger, Ryan clearly states 'What is this, Sean?' Sean replies 'You are getting married to me.' Then with his head facing down Ryan says 'I am not used to this.' Then he says to Sean 'Baptize in the name of Jesus.' Sean then explains to Ryan not once but twice 'This is not a baptism. It is a wedding.'"

18. The report of the Public Guardian expressed a concern that "Ryan Morris contracted into a marriage of which he did not have the capacity, nor awareness of his contract." Further concern was expressed that during the time that Sean has been conservator, "Ryan was left without his own income, no health insurance, has increasing episodes of tantrums, violent acting out, and flip-flopping his acceptance or denial of people in his life." It was observed that: "Ryan currently spends weeks at a time on a long-distance truck driver schedule. He is not enrolled in school, provided optimum health care services, or activities compelling him to academic growth. His family members are requesting an opportunity to provide the stability and resources which they feel Ryan needs and deserves." The report concluded: "Family members Ronald Moore, Monica Mukai and Olivia Mukai-Lechner appear to be a genuinely viable alternative to Public Guardian."

19. In October 2017, a probate investigator reported that Ryan (then age 23) had a reported diagnosis of cerebral palsy, schizophrenia, attention-deficit/hyperactivity disorder, behavior disorder, epilepsy, and intellectual disability. It was also reported that Ryan has exhibited episodes of violence in which he has physically assaulted others. In October 2017, Ryan was placed under a 5150 involuntary psychiatric hold after assaulting his mother in law.

20. In November 2017, an investigator with the Office of Public Guardian/Conservator for Riverside County found that Ryan lacks the ability to manage his person or estate or to resist fraud and undue influence.

21. In the years 2015 and 2016, five separate reports of suspected abuse against Ryan by Sean were

filed with Adult Protective Services. APS categorized two as “unfounded” and three as “inconclusive.”

22. On September 19, 2017, a court investigator interviewed Ryan. It was reported that Ryan could not provide the correct information for his age, the month, the current year, day of the week, and date. Ryan told the investigator that he is married to Sean. When the investigator asked Ryan what “marriage” means, Ryan said that “marriage is love.” When Ryan was asked if he loves Sean, Ryan responded affirmatively, adding: “He takes me to Disneyland and other amusement parks.”

23. On September 19, 2017, the court investigator interviewed a supervisor at the day program that Ryan has been attending since June 2017. The supervisor reported that Ryan’s hygiene is poor, that he comes to the program unshaven, hair not combed, and in dirty clothes. A work coach reported that Ryan often comes to the program with body odor and appearing like he has not showered in several days.

24. On September 22, 2017, an investigator for the Office of Public Guardian interviewed Theresa and Frank Spicer. They are the parents of Sean, Ryan’s husband. Ryan and Sean live with the parents. The parents would not allow the investigator into their home, so the interview was conducted in the driveway. Theresa told the investigator: “I am not happy with Ryan. He’s attacked me a couple of times. It sent me into a depression. I am seeing a therapist now because of that. Personally, I want him out of here. I did have attempted suicide, five weeks ago. I cut myself; it hurt bad.” Theresa added: “Ryan is a manipulative piece of shit.”

25. On October 16, 2017, the court investigator interviewed Ryan again. Ryan could not provide correct information as to his last name, his age, month, year, day of week, and date. A week later, the investigator spoke with Ryan by phone. Ryan was at his day program. In addition to not being able to provide correct information as to his last name, he was not able to specify what month it was. Instead, he said “It is close to Halloween.”

26. At various times during a variety of interviews, Ryan has acknowledged that Monica and Olivia Mukai are his aunts and that Ronald Moore is his brother. At other times, he has stated that he does not know who these people are. In fact, they are his aunts and his brother.

27. On September 20, 2017, three members of Ryan’s biological family met in person with the court investigator and a deputy public guardian at the Office of the Public Guardian. Present were Monica Mukai (aunt), Jaime Moore (sister), Krystal Mukai (sister), and Tamara Mazzei Mukai (grandmother). They expressed concerns about Ryan being isolated from them by his conservators. They said they were initially in support of Sean being Ryan’s conservator since he had been Ryan’s caregiver when they met. However, they became very concerned when they learned that Sean had a history of sexual abuse, both as a victim and as a perpetrator. They have initiated and are continuing with litigation because “they firmly believe that Ryan is at risk of sexual abuse and exploitation.” Monica has offered to be appointed as a conservator for Ryan and that Ryan would live with her. She has worked out a proposed schedule of activities for Ryan, including counseling and an educational program that would serve his special needs.

28. Although there is evidence that Ryan says he loves Sean, there is also evidence that says that he fears Sean. It appears that Ryan may have met Sean when Sean was working as a caregiver at the foster home operated by Ryan's adoptive mother. Some evidence suggests that the relationship between Ryan and Sean may have begun when Ryan was only 17 years old.

29. Attempts by Ryan's maternal grandmother to gain custody of Ryan as a child, and of repeated attempts by extended family members to enable Ryan to maintain contact with them – a large family that loves him and wants him to be in their lives – has been reported in several newspaper articles over the years. (Orange County Register, "Boy has special needs, and a special bond," December 27, 2000; Orange County Register, "A tale of two families," January 11, 2004; Orange County Register, "Caretakers accused and admired," July 25, 2004; Orange County Register, "O.C. school, state battle," February 4, 2007; Orange County Register, "Two families torn over adopted boy," February 4, 2007.)

30. Ryan has made statements to investigators for the court and public guardian that he loves Sean, wants to live with Sean, and wants Sean to remain as his conservator. However, in his deposition he has made contradictory statements. One report notes that he "flip flops" on what he wants. It has also been reported that sometimes he remembers that he has a brother and aunts and at other times he does not. He has also stated that he fears Sean. Violence seems to be a recurring problem in their household. Therefore it is questionable what Ryan's true wishes are as to who he wants to be his conservator and where he really wants to live.

31. While his court-appointed attorney must advocate for Ryan's stated wishes, even if those wishes are clearly contrary to his best interests, the court must look at the overall situation, evaluate his capacity to consent to marriage and his capacity to consent to sex, consider the state's duty to respect his rights as well as the state's duty to protect him from abuse or exploitation, and ultimately decide what is in Ryan's best interests as a conservatee under the protection of the Probate Court. This evaluation and ruling could be done during the proceeding to determine whether to remove the current conservator and replace him with a biological relative or with the public guardian. The report of the public guardian suggests that the replacement of the current conservator with one or more of the petitioning biological relatives would be appropriate given the circumstances of this case.

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## Laws Relevant to Ryan Morris: Marriage, Abuse, and Judicial Authority

### **Welfare and Institutions Code Section 4502 Lanterman Act Statement of Rights**

“Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.”

“It is the intent of the Legislature that persons with developmental disabilities shall have rights including but not limited to the following: . . . (b) A right to dignity, privacy, and humane care . . . (h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect . . . (j) A right to make choices in their own lives, including, but not limited to, where and with whom to live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.”

Comment: The Lanterman Act makes it clear that people with developmental disabilities have full constitutional and statutory rights, including a right to be free from abuse and neglect. The Lanterman Act must be read in conjunction with provisions of the Probate Code creating conservatorships to protect vulnerable adults from abuse and neglect.

### MARRIAGE: CAPACITY AND CONSENT

#### **Family Code Section 300 Definition of Marriage – Consent Required**

“Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary.”

Comment: Prior to January 1, 2015, the statutory definition of marriage specified that it was a contract between a man and a woman. That restriction was declared unconstitutional by a federal district court in 2010. The court held that same-sex couples have a fundamental right to marry under the due process clause of the Fourteenth Amendment. (*Perry v. Schwarzenegger*, 704 F.Supp. (N.D. Cal. 2010). In a decision issued in June 2013, the United States Supreme Court allowed the decision of the federal district court to stand. Ryan Morris and Sean Spicer married in 2014 – pursuant to these court rulings but before the statutory language was changed to become gender neutral. The statute in effect at the time of their marriage, however, specifically requires the consent of both parties to the marriage. The longstanding requirement of consent was not affected by the federal litigation involving the right of same-sex couples to marry. This requirement, therefore, applies to all couples regardless of sex or sexual orientation.

**Probate Code Section 1900 - 1901**  
**Capacity of Conservatee to Marry**

Section 1900. “The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry or to enter into a registered domestic partnership.”

Section 1901. “The court may by order determine whether the conservatee has the capacity to enter into a valid marriage . . . .”

Comment: The fact that Ryan was placed under an order of conservatorship in 2012 and remained under that order in 2014 when he participated in a marriage ceremony did not automatically render him incapable of entering into a legal marriage contract. However, the validity of his marriage depends on whether he supplied the necessary consent to that contract. That would depend on two factors: (1) whether he had the capacity to consent under the criteria specified in Probate Code Section 810 through 812; and (2) if he had such capacity, whether there was actual consent or whether his assent to the marriage was the result of fraud, duress, or *undue influence*.

**Probate Code Section 810 - 813**  
**Legal Mental Capacity**

Section 810. “(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for the their acts or decisions.”

Section 810. “(b) A person who has a mental or physical disorder may still be capable of contracting, . . . marrying . . . and performing other actions.”

Section 810. “(c) A judicial determination that a person . . . suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person’s mental functions rather than on a diagnosis of a person’s mental or physical disorder.”

Section 811. “(a) A determination that a person . . . lacks the capacity to make a decision or do a certain act , including, but not limited to, the incapacity to contract [or] . . . to marry . . . shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following: (A) Level of arousal or consciousness. (B) Orientation to time, place, person, and situation. (c) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following: (A) Short- and long-term memory, including immediate recall. (B) Ability to understand or communicate with others, either verbally or otherwise. (c) Recognition of familiar objects and familiar persons. (D) Ability to

understand and appreciate quantities. (E) Ability to reason using abstract concepts. (F) Ability to plan, organize, and carry out actions in one's own rational self-interest. (G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following: (A) Severely disorganized thinking. (B) Hallucinations. (c) Delusions. (D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions.”

Section 812. “Except where otherwise provided by law, including, but not limited to, Section 813 [medical decisions] and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following: (a) The rights, duties, and responsibilities created by, or affected by the decision. (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision. (c) The significant risks, benefits, and reasonable alternatives involved in the decision.”

Comment: The fact that Ryan reportedly has the mental capacity of a 5-year-old would not, in and of itself, preclude him from having the capacity to consent to marriage. Nor would his diagnosis of cerebral palsy, intellectual disability, schizophrenia, attention deficit/hyperactivity disorder, behavior disorder, and epilepsy. Nor would the fact that he is “emotionally fragile” or substantially unable to resist undue influence. The evaluation of a medical doctor documenting that he has the following conditions would also not necessarily preclude him from having the capacity to consent to marriage or actually consenting to marriage: disorientation as to time and place; short-term and long-term memory deficits; major impairment in his ability to reason using abstract concepts; and unwanted compulsive thoughts and behaviors – all of which were constant problems which did not significantly vary in frequency, severity, or duration. This information, however, helps to explain his demonstrated functional deficits, including his actions on the video of the marriage ceremony. Any capacity evaluation professional, or any court judging whether Ryan: (1) had the capacity to consent to a marriage contract; or (2) actually consented to the marriage or whether his assent was

a function of undue influence, would need to apply the legal criteria described in Sections 811 and 812 to the facts of this case. Those facts are contained in the reports of the investigator of the court and the investigator of the public guardian, the medical doctor who did the initial capacity evaluation, the depositions of Ryan and Sean, and any further evaluation of Ryan that may be done as well as any testimony that may be elicited at the hearing.

Having said all of that, viewing the video of the marriage ceremony, in and of itself, was enough to cause the investigator for the public guardian to believe that Ryan lacked the capacity to consent to marriage. A reasonable person viewing the video could also conclude that Ryan was assenting to the marriage as a result of undue influence – a condition to which a prior court order found him to be susceptible.

Under Section 812, a person lacks the capacity to make a decision unless he has the ability to understand and appreciate the probable consequences of the decision, as well as the significant risks, benefits, and reasonable alternatives involved in the decision. With his minimal level of understanding, his impulsiveness, and his short-term and long-term memory deficits, it is hard to believe that Ryan would have understood and appreciated the consequences of marrying Sean. In particular, it is doubtful that he would have understood that as a result of the marriage that his SSI benefits would be terminated and that he would become ineligible for Medi-Cal health benefits. It is noteworthy that the conservatorship order entered on February 19, 2014 specifically found that Ryan was substantially unable to manage his financial resources.

### **Welfare and Institutions Code Section 15610.70 Undue Influence**

(a) “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability. (2) The influencer’s apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification. (3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following: (A) Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep. (B) Use of affection, intimidation, or coercion. (C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes. (4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

Comment: This section became effective on January 1, 2014 – several months before Ryan and Sean participated in the marriage ceremony. Many of the factors listed in this code section were operative at the time of the marriage ceremony. Ryan was vulnerable and susceptible to being influenced. Ryan’s conservator (his adoptive mother) arranged for the marriage. She was in a position of authority. Ryan was living with Sean and was dependent on him at the time. Sean had a position of apparent authority. Ryan’s interactions with his biological family members were restricted by his conservator. The video of the ceremony showed that Ryan was being coached and prodded by Sean and by the marriage officiator and/or others. Furthermore, there was a highly inequitable result, namely, the loss of financial and medical benefits which made Ryan completely dependent on Sean for his necessities of life.

**Journal of the American Academy  
of Psychiatry and the Law (2017)  
“Evaluation of the Capacity to Marry”**

“There are four basic elements to assessing capacity, and it is important to keep in mind that capacity is decision specific and can be fluid. . . . The first criterion is that a patient must be able to express a clear and consistent choice. . . . Second, the patient must be able to understand the risks and benefits of the decision, as well as the alternatives. . . . The third prong of a capacity assessment is to be able to apply those risks, benefits, and information regarding the decision to the evaluatee . . . [T]his means he would be able to understand how those elements apply in his particular case. . . . Finally, the patient must be able to manipulate the relevant information rationally, meaning that there is not, for example, a mental illness such as dementia, psychosis, or severe depression that is hindering rational thought. . . . An individual must meet all four criteria to be deemed to have capacity to make the decision. It is valuable to keep in mind that the capacity threshold changes depending on the implications of the decision. . . . With the decision to marry, this capacity threshold also applies, and the higher risk situations are those with more financial or family implications.”

“We can see several guidelines emerge as we apply these principles to the capacity to marry. First, an individual entering into a marriage must do so voluntarily. There cannot be undue influence or coercion. Second, the individual must have the capacity to do so, as defined above by the four criteria. Finally, the individual must know with whom he is entering into this contract. . . .”

Comment: According to this scholarly article, in order to have capacity to marry, “An individual must express a consistent choice, understand the implications of the decision, and be able to reason rationally about the decision.” Considering Ryan’s demonstrated and ongoing serious functional deficits, it is unlikely that he had the capacity to marry at the time of the ceremony with Sean.

**Family Code Section 2210  
Voidable Marriage / Annulment**

“ A marriage is voidable and may be adjudged a nullity if any of the following conditions existed

at the time of the marriage: (a) The party who commences the proceeding or on whose behalf the proceeding is commenced was without the capability of consenting to the marriage . . . (c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as his or her spouse.

Comment: If the court finds that Ryan entered into a marriage without legal capacity or legal consent, either due to mental and functional deficits as defined by Probate Code Sections 810-812, or was under undue influence at the time of the marriage ceremony as defined in Welfare and Institutions Code Section 15610.70, the court should take correction action. The court could remove Sean as conservator and appoint a new conservator with directions to file a petition for annulment of the marriage under Family Code Section 2210. Alternatively, the court could appoint a guardian ad litem to file such a petition on Ryan's behalf. Sean and Ryan's conservator at the time of the marriage, as well as the officiant at the ceremony, should be deemed to have a conflict of interest and therefore should not serve as Ryan's conservator or be appointed. If the marriage is annulled, the conservator could petition the Social Security Administration on Ryan's behalf to have his SSI benefits reinstated retroactively due to the fact that his disqualification was based on a marriage that has been voided. If the petition is granted, this could result in Ryan receiving tens of thousands of dollars in retroactive benefits, thus giving the conservator funds with which to improve Ryan's quality of life in the future.

## CRIMINAL LAW

### **Penal Code Section 368(c) Dependent Adult Abuse**

“Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.”

Comment: At the time of the marriage ceremony and the time of executing the application for a license to marry, Sean knew that Ryan was a dependent adult. During the ceremony it was clear to everyone, including Sean, that Ryan did not understand the significance of what was happening. Despite this, Sean prodded Ryan to proceed with the ceremony. Sean also would have known that Ryan lacked capacity to understand the consequences of marriage. Ryan suffered financially as a result of the marriage. He lost his SSI benefits and Medi-Cal benefits. Ryan was a victim of abuse in that he was coached to go through a marriage ceremony when, in fact, he lacked the capacity to understand the significance of and potential consequences of marrying Sean. Sean could also be charged with dependent adult abuse because he has permitted Ryan to be placed in a situation in which his health may be endangered. Sean has made Ryan's place of residence the home of Sean's

parents. Sean’s mother and Ryan clearly have physical and other conflicts on a recurring basis. The mother hates Ryan so much that she told a government investigator: “Ryan is a manipulative piece of shit.” The mother admitted that she is suicidal, has attempted suicide, and that she wants Ryan out of the house. By having Ryan stay in this residential environment on a daily basis, Sean has placed Ryan – and everyone in the house for that matter – in danger. It is not unthinkable that when her depression and anger gets to a breaking point, the mother could kill Ryan and commit suicide. Because the court has been made aware of this danger in documents filed with the court, by allowing Ryan to continue living in this household the court could be allowing a murder-suicide to occur.

## **Penal Code Section 182 Conspiracy**

“(a) If two or more persons conspire: . . . (5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws . . . They are punishable as follows: . . . by imprisonment in the county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine.”

Comment: The marriage of Ryan to Sean was the result of an agreement between Sean and Michelle (Ryan’s co-conservator at the time) and with the active cooperation and agreement of the marriage officiator (who was the other co-conservator). They were all intimately familiar with the facts concerning Ryan’s mental disabilities and functional deficits at the time of the marriage ceremony. They also could plainly see that during the ceremony Ryan was not understanding what was happening. At one point he thought it was a baptism ceremony. They had a choice to make and they made a deliberate and willful decision to put Ryan through a ceremony and paperwork that resulted in a legal marriage (although one that is voidable due to incapacity and/or lack of legal consent as a result of undue influence). They knew that California marriage laws require the consent of both parties to the marriage. They knew that legal consent was lacking in this case. Yet they intentionally followed through with the ceremony, signing legal documents, and having the documents filed with the government. Section 182 was violated because two or more persons intended to agree and did agree to have Ryan and Sean enter into a marriage even though they knew that Sean lacked the capacity to marry or did not legally consent to the marriage. This conspiracy was injurious to public morals, or perverted justice, or was injurious to the due administration of California’s marriage laws.

## CALIFORNIA RULES OF COURT

### **Rule 7.10 Ex Parte Communications**

(c) Ex parte communications received and considered.  
(1) Notwithstanding (b)(2), a judicial officer or court staff may receive an ex parte communication concerning an open proceeding under the Probate Code or an open LPS conservatorship proceeding for the limited purpose of ascertaining whether it is a communication described in (b) or a communication described in (c)(2).

(2) Subject to the requirements of (c)(3), a judicial officer may consider an ex parte communication from a person about a fiduciary's performance of his or her duties and responsibilities or regarding a conservatee or ward in an open proceeding under the Probate Code or an open LPS conservatorship proceeding. The court may decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person. The court may also take appropriate action, consistent with due process and California law, including one or any combination of the following:

(A) Review the court file and take any action that is supported by the record, including ordering a status report or accounting if it appears that a status report or accounting should have been filed by a fiduciary but is delinquent. (B) Refer the communication to a court investigator for further action, and receive, consider, and respond to any report from the investigator concerning it; (C) If the communication discloses possible criminal activity, refer the matter to the appropriate law enforcement agency or prosecutor's office; (D) If the communication discloses conduct that might subject a person or organization to disciplinary action on a license, refer the matter to the appropriate licensing agency; (E) If the communication discloses possible elder or dependent adult abuse, or child abuse, refer the matter to appropriate state or local governmental agencies, including adult protective or child protective service departments; and (F) Set a hearing regarding the communication, compel the fiduciary's attendance, and require a response from the fiduciary concerning the issues raised by the communication.

Comment: The court may receive and consider the statement of concern and related documents submitted by Spectrum Institute. The communication is about a conservatee in an open proceeding. As a result, the court may share the documents with the parties to the case and, if it deems appropriate, take the following actions: (1) review the court file, including the documents from which the statement of facts described by Spectrum Institute were taken; (2) order a status report; (3) refer the matter to the court investigator for further investigation and reporting; (4) as to the aspects that may involve possible criminal activity (dependent adult abuse and conspiracy), refer the matter to the office of the Riverside District Attorney; (5) since the communication identifies possible dependent adult abuse, refer the matter to the adult protective services agency; and (6) take other appropriate action, including inquiring into the validity of the marriage between Ryan and Sean, such as: (a) appointing a qualified and licensed capacity assessment expert under Evidence Code Section 730; and (b) if the marriage is deemed by the court to be invalid, appoint a guardian ad litem to initiate an action to annul the marriage. The court may also remove Sean and appoint a new conservator.

Submitted by:



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