

COPY

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

PHILLIP KAPUSTA )  
 Plaintiff )  
 v. )  
 ELAINE MAE KAPUSTA )  
 BY GEORGE W. DODGE, GUARDIAN )  
 FOR ELAINE MAE KAPUSTA )  
 2300 Clarendon Blvd, Suite 607 )  
 Arlington, Virginia 22201 )  
 Respondent )  
 and )  
 LYNN KAY )  
 4136 North River Street )  
 McLean, Virginia 22101 )  
 Defendant )  
 CARY Z. CUCINELLI )  
 CO-CONSERVATOR )  
 FOR ELAINE KAPUSTA )  
 4084 University Drive, Suite 202A )  
 Fairfax, Virginia 22030 )  
 Defendant )  
 VALERIE B. GEIGER )  
 CO-CONSERVATOR )  
 FOR ELAINE MAE KAPUSTA )  
 4084 University Drive, Suite 202A )  
 Fairfax, Virginia 22030 )  
 Defendant )

Case No. CL 2018-11871-  
 Fiduciary No. FI-2020-0001049

FILED  
 2025 JUN -2 PM 2:54  
 CLERK OF COURT

**GUARDIAN’S UPDATE REGARDING A CHANGE IN CIRCUMSTANCES AND  
 REQUEST FOR RELIEF**

COMES NOW, movant, George W. Dodge [hereinafter “Mr. Dodge,” or “Guardian”],  
 Guardian of Elaine M. Kapusta [hereinafter “Ms. Kapusta” or “Ward”], by and through Stephen D.

Hall, Esq, counsel for the Guardian, and files Update Regarding a Change in Circumstances and Request for Relief pursuant to Virginia Code § 64.2-2012. In support, Guardian avers as follows:

I. STATEMENT OF FACTS AND UPDATE FOR THE COURT

1. On December 16, 2024, this Court heard Guardian's Petition to Modify and Ms. Kay's motions.
2. The Court took that matter under advisement and is expected to provide its ruling on January 3, 2024.
3. The Court permitted Ms. Kay to provide any documentation regarding Guardian's failure to take action as directed by Ms. Kapusta's care team.
4. At approximately 5:00pm on December 20, 2024, Ms. Kay called 9-1-1 alleging criminal elder medical neglect based on the affidavit that she filed in this case.<sup>1</sup> A copy of this phone call is attached for the Court and referenced as Exhibit A.
5. In her 9-1-1 call she states that she wants to put the Guardian in jail. *See Exhibit A* at 2:40-51.
6. She further tells the 9-1-1 operator that she wants him disbarred, removed as guardian, and investigated for criminal elder neglect. *See id.* at 3:05-3:15.
7. On December 20, 2024 officers responded to Vienna Manor to investigate Ms. Kay's allegations. Furthermore, Officer Stephen Rill called Guardian and asked for information about Ms. Kapusta.

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<sup>1</sup> Guardian objects to Ms. Kay's affidavit because it is irrelevant, lacks proper foundation, and is hearsay. First, it is irrelevant because it was not provided by a member of her treatment team meaning that Mr. Dodge did not fail to perform any action as recommended by Ms. Kapusta's doctors. It lacks proper foundation because the affidavit is based on the falsehood that Ms. Kapusta is receiving no treatment when she—in fact—is under the treatment of a hematologist, geriatric care doctor, care team, and residential treatment facility. Finally, the affidavit itself is hearsay.

8. Guardian cooperated with Officer Rill and provided him with the information he needed.
9. No charges were filed and the case was closed.
10. On December 20, 2024, Ms. Kay e-mailed Grace Kimball at Vienna Manor and said, "IF MY MOM DIES AT VIENNA MANOR, YOU WILL HAVE A WRONGFUL DEATH LAWSUIT." A copy of this e-mail is attached for the Court and referenced as Exhibit B. This e-mail is located on page 2 of Exhibit B.
11. She subsequently forwarded this e-mail to several other people including chairman@fairfaxcounty.gov on Christmas, December 25, 2024. *See id.*
12. On that day, Ms. Kay further left a poor review for Vienna Manor. This included statements that Vienna manor "DOES NOT CARE THAT THEY ALMOST KILLED MY MOM!"; "VIENNA MANOR IS JUST ANOTHER DEATH WAREHOUSE JUST LIKE COBBDALE ASSISTED LIVING DID THE SAME THING!"; and "I EMAIL WARNED THEM OF 'WRONGFUL DEATH LAWSUIT'! WITH NO RESPONSE!-THEY SIMPLY DO NOT CARE!" A copy of this e-mail is attached for the Court and referenced as Exhibit C.
13. On December 30, 2024, undersigned counsel spoke with Ms. Grace Kimball, the Executive Director of Vienna Manor. Ms. Kimball advised that Ms. Kay's threats are disruptive to Vienna Manor, and if action is not taken to protect them from harassment and prevent Ms. Kay from interfering with her mother's care, then they would be forced to discharge Ms. Kapusta. Indeed, as of January 2, 2025, Vienna Manor is presently moving forward with discharging Ms. Kapusta.

14. Ms. Kimball informed undersigned counsel that calling the police to Vienna Manor was, “totally disruptive to my staff and other families.” She further noted a member of care team already wanted to resign, but Ms. Kimball stopped her.
15. Guardian, for his part, has continued setting appointments and working with Ms. Kapsuta’s care team including speaking with her primary care physician, and setting an additional blood draw appointment, and working to find Elaine a geriatric psychiatrist in consultation with Elaine’s primary care physician.
16. During this period, Ms. Kapusta celebrated Christmas and her birthday. Mr. Dodge dropped off presents for Christmas and a cake for her birthday, and Vienna Manor’s staff celebrated with her. Photographs of Elaine celebrating her birthday and Christmas are attached for the Court and referenced as Exhibit D.

## II. STANDARD OF REVIEW

17. Virginia Code § 64.2-2012(c) permits the Court to modify an order appointing a guardian or conservator upon a finding that it is in the best interests of the incapacitated person that the extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need of the incapacitated person.
18. Virginia Code § 64.2-2012(a) permits the Court to modify the type of appointment or the areas of protection, management or assistance previously granted or order other appropriate relief on its own motion.

## III. ARGUMENT

19. Ms. Kay, again, demonstrated contempt of this Court’s authority to adjudicate these matters.

20. While Guardian's Petition and her various Petitions were in the breast of the court, Ms. Kay summoned police officers to Vienna Manor, tried to have Mr. Dodge arrested, e-mailed threats to Vienna Manor, and left bad reviews. This is *exactly* the behavior Guardian was trying to avoid.
21. It is clear that she is attempting to interfere with Ms. Kapsuta's care, intimidate Ms. Kapusta's care team, and force people in Ms. Kapusta's care team to act outside of her best interests for fear of reprisal.
22. Worst of all, her attempts are *working*. Ms. Kapsuta may well be discharged from Vienna Manor if this Court does not take action to prevent Ms. Kay from harassing them.
23. One thing is clear: discharge from Vienna Manor is *not* in Ms. Kapusta's best interests.
24. This Court has the authority to issue an order to protect Ms. Kapusta, and it should do just that.

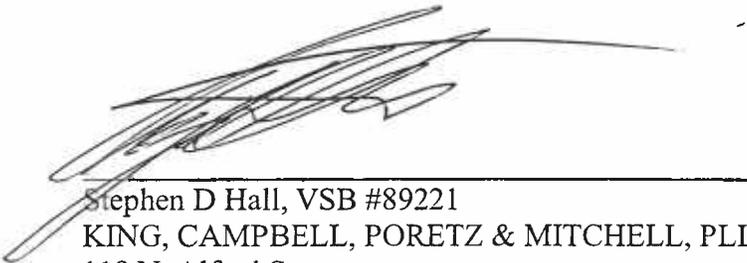
#### IV. CONCLUSION

WHEREFORE, in light of the aforementioned facts and arguments, George W. Dodge, Guardian for Elaine Kapusta and acting in her best interests, asks that this Court take action to protect Ms. Kapusta's care team from harassment including, but not limited to: preventing direct, indirect, or third-party contact with any individual providing care for Ms. Kapusta and any other appropriate relief it deems necessary to protect Ms. Kapusta.

RESPECTFULLY SUBMITTED, this 2<sup>nd</sup> day of January, 2024.

[THIS SPACE LEFT INTENTIONALLY BLANK]

GEORGE DODGE, ESQ.  
By Counsel

A handwritten signature in black ink, appearing to read "Stephen D Hall", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Stephen D Hall, VSB #89221  
KING, CAMPBELL, PORETZ & MITCHELL, PLLC  
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Alexandria, Virginia 22314  
(703) 683-7070 (phone)  
(703) 652-6010 (Fax)  
stephen@kingcampbell.com  
*Counsel for Guardian*

## CERTIFICATE OF SERVICE

The undersigned further hereby certifies that on January 2, 2025, a true and accurate copy of the foregoing was served, via electronic mail on the following:

- Justin B. Berger, counsel for Phillip Kapusta at [jberger@haleball.com](mailto:jberger@haleball.com)
- Laurie L. Kirkland, counsel for Elaine Kapusta at [lkirkland@bklawva.com](mailto:lkirkland@bklawva.com)
- Elizabeth Wildhack, guardian *ad litem* for Elaine Kapusta a  
[elizabeth@mwmlegalgroup.com](mailto:elizabeth@mwmlegalgroup.com)
- Cary Cucinelli, co-conservator for Elaine Kapusta at [cary@cucinelligeiger.com](mailto:cary@cucinelligeiger.com)
- Valerie Geiger, co-conservator for Elaine Kapusta at [valerie@cucinelligeiger.com](mailto:valerie@cucinelligeiger.com)
- Lynn Kay at [tweeter7@yahoo.com](mailto:tweeter7@yahoo.com); [lynnkay7@gmail.com](mailto:lynnkay7@gmail.com)



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Stephen D Hall, VSB #89221

**EXHIBIT A**

**EXHIBIT B**

stephen@kingcampbell.com

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**From:** Lynn Kay <tweeter7@yahoo.com>  
**Sent:** Wednesday, December 25, 2024 8:50 AM  
**To:** Chairman; bryan.hill@fairfaxcounty.gov; Benedicte Libibe; Samantha A. Renner; Michelle Ritter; George Dodge; Stephen Hall; Cary Cucinelli; Valerie Geiger; Elizabeth Wildhack; elizabeth@twplc.com; Laurie Kirkland; philipkapusta@gmail.com; Justin B. Berger; grace@viennamanor.com; Lynn Kay; lynnkay7@gmail.com  
**Subject:** Fw: ☹️-WARNED ALL FIDUCIARIES-12/20/24, 12/23/24 & 12/25/24-☹️-REMOVE ELAINE KAPUSTA-(MY MOM) FROM SEROQUEL BEFORE SHE IS ALMOST KILLED AGAIN-(8/2/24)-\*\*FDA-UNAPPROVED FOR ELDERLY DEMENTIA-BLACK-BOXED WARNING AT RISK OF DEATH OF HEART ATTACK AND STROKE-\***Attachments:** SEROQUEL NOT FOR ELDERLY DEMENTIA.pdf; 8-2-24-UNRESPONSIVE-STROKE-Kapusta.Elaine-EMS.pdf; WENT UNCONSCIOUS-PG 104-FAIRFAX INOVA HOSPITAL-WENT UNCONSCIOUS-2024.pdf; ☹️-SEROQUEL & ZYPREXA-FDA UNAPPROVED ELDERLY DEMENTIA-BLACK-BOXED WARNING-AT RISK OF INCREASED DEATH.pdf

----- Forwarded Message -----

**From:** tweeter7 <tweeter7@yahoo.com>  
**To:** George Dodge <gdodge@georgedodgelaw.com>; Stephen Hall <stephen@kingcampbell.com>; Cary Cucinelli <cary@cucinelliger.com>; Valerie Geiger <valerie@cucinelliger.com>; Elizabeth Wildhack <elizabeth@mwmlegalgroup.com>; elizabeth@twplc.com <elizabeth@twplc.com>; Laurie Kirkland <lkirkland@bklawva.com>; philipkapusta@gmail.com <philipkapusta@gmail.com>; Justin B. Berger <jberger@haleball.com>; Lynn Kay <tweeter7@yahoo.com>; lynnkay7@gmail.com <lynnkay7@gmail.com>  
**Cc:** "grace@viennamanor.com" <grace@viennamanor.com>  
**Sent:** Wednesday, December 25, 2024 at 08:35:52 AM EST  
**Subject:** ☹️-WARNED ALL FIDUCIARIES-12/20/24, 12/23/24 & 12/25/24-☹️-REMOVE ELAINE KAPUSTA-(MY MOM) FROM SEROQUEL BEFORE SHE IS ALMOST KILLED AGAIN-(8/2/24)-\*\*FDA-UNAPPROVED FOR ELDERLY DEMENTIA-BLACK-BOXED WARNING AT RISK OF DEATH OF HEART ATTACK AND STROKE-\*\*NOT APPROVED FOR HEART PATIENTS\*\*

## Quetiapine Antipsychotic is Linked to Sudden Cardiac Death

Friday, February 23 2024 

A recent publication from the Heart Rhythm Society confirms a significant risk of QT prolongation, ventricular arrhythmia, and sudden cardiac death associated with quetiapine, a second generation antipsychotic also known as the brand name Seroquel.

----- Forwarded Message -----

From: tweetery7 <tweetery7@yahoo.com>

To: "grace@viennamanor.com" <grace@viennamanor.com>; Lynn Kay <tweetery7@yahoo.com>; "lynkay7@gmail.com" <lynkay7@gmail.com>

Sent: Friday, December 20, 2024 at 07:25:14 PM EST

Subject: REMOVE ELAINE KAPUSTA-(MY MOM) FROM SEROQUEL BEFORE SHE IS ALMOST KILLED AGAIN-  
\*\*FDA-UNAPPROVED FOR ELDERLY DEMENTIA-BLACK-BOXED WARNING AT RISK OF DEATH OF HEART  
ATTACK AND STROKE-\*\*NOT APPROVED FOR HEART PATIENTS\*\*

REMOVE ELAINE KAPUSTA-(MY MOM)- FROM SEROQUEL BEFORE SHE IS ALMOST KILLED AGAIN-  
\*\*FDA-UNAPPROVED FOR ELDERLY DEMENTIA-BLACK-BOXED WARNING AT RISK OF DEATH OF HEART  
ATTACK AND STROKE-\*\*NOT APPROVED FOR HEART PATIENTS\*\*

<https://guidestareldercare.com/blog/quetiapine-antipsychotic-is-linked-to-sudden-cardiac-death>

# Quetiapine Antipsychotic is Linked to Sudden Cardiac Death

Friday, February 23 2024

IF MY MOM DIES AT VIENNA MANOR, YOU WILL HAVE A "WRONGFUL DEATH LAWSUIT"

WARNED ON 12/20/24-REMOVE MY MOM!

=====

🔊-WARNED ALL FIDUCIARIES-12/20/24, 12/23/24 & 12/25/24-🔊-REMOVE ELAINE KAPUSTA-(MY MOM) FROM  
SEROQUEL BEFORE SHE IS ALMOST KILLED AGAIN-(8/2/24)-\*\*FDA-UNAPPROVED FOR ELDERLY DEMENTIA-  
BLACK-BOXED WARNING AT RISK OF DEATH OF HEART ATTACK AND STROKE-\*\*NOT APPROVED FOR HEART  
PATIENTS\*\*

**EXHIBIT C**

9:50

← Messages

📶 93



**Lynn Kay**

Local Guide · 15 reviews · 1 photo



a week ago **New**

MY MOM IS BEING MEDICALLY-FORCIBLY DETAINED AT VIENNA MANOR ENTIRELY AGAINST HER WILL BEING DOPED UP WITH ANTIPSYCHOTICS-FDA-UNAPPROVED-BLACK-,BOXED WARNING NOT FOR ELDERLY DEMENTIA AND UNAPPROVED FOR HEART PATIENTS AT RISK OF DEATH OF HEART ATTACK AND STROKE. AND VIENNA MANOR DOES NOT CARE THAT THEY ALMOST KILLED MY MOM!-8/2/24-NEEDED TO BE REVIVED BY PARAMEDICS!

WITH SEROQUEL-QUETIAPINE AND THEY DO NOT CARE THAT THIS IS NOT FOR HEART PATIENTS AND THAT THE MEDICAL INCOMPETENCE ONCE AGAIN MOM ALMOST DIED.

🔒 Q vienna manor assisted living review

8/2/24-VIENNA MANOR IS JUST ANOTHER DEATH WAREHOUSE JUST LIKE COBBDALE ASSISTED LIVING DID THE SAME THING! AND MOM WAS ALSO GRAVELY INJURED THERE, TOO!

THESE "DEATHRAPPS" ALL NEED TO BE SHUTDOWN!

THEY LINE THEIR POCKETS AND DESTROY THEIR HEALTH!

YOUR LOVED ONES ARE NOT SAFE AT THESE "WAREHOUSED DEATHTRAPS"

I EMAIL WARNED THEM OF "WRONGFUL DEATH LAWSUIT"! WITH NO RESPONSE!-THEY SIMPLY DO NOT CARE!

Quetiapine Antipsychotic is Linked to Sudden Cardiac Death

**EXHIBIT D**







