



## *Atypical Beneficiary Requests*

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# "I woke up in a Soho doorway"

fi·du·ci·ar·y (fi-dōō-shē-ěr-ē): n. *"One, such as an agent of a principal or a company director, that stands in a special relation of trust, confidence, or responsibility in certain obligations to others."*

Latin: fiduciarius, from fiducia – *'trust'*



# Who Are You – The Who



- Top Ten List
- Case Studies
- Framework Evaluation
- Implementation



# Top Ten List



- 11

- 10

- 9

- 8

- 7

- 6

- 5

- 4

- 3

- 2

- 1

## **“Where you goin’ with that gun in your hand....”**

### **Framework**

- Appropriateness for Individual
  - Need
  - Relation to Disability
  - Opinion of professional
    - Neuropsych?
  - Financial Impact
  - Optimal Outcomes
  - Settlor Letter of Intent
- Federal/State Laws
- Review Trust, Pol/Proc.
- Values Check of Trustee

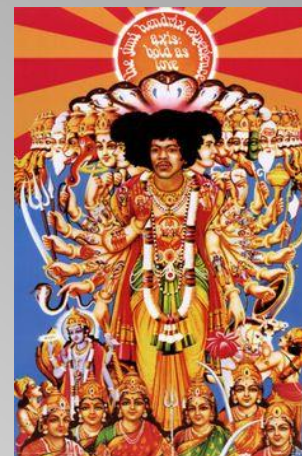
#### **Joe:**

- **Asks for a firearm for self-defense**
- **Has recently filed a grievance against his mental health provider**
- **Liability?**
- **Caught his ‘old lady messin’ around with another man’**

#### **Mitch Mitchell:**

- **Asks for adaptive equipment to go target shooting with his brother, uncle and father**
- **This is one of the only activities he can actively participate in with “the guys” in his family**
- **He has Cerebral Palsy and uses a wheelchair**

# Hey Joe – Jimi Hendrix



- Benefits of owning a firearm
  - Hunting to provide food or for recreation
  - Personal Protection
  - Collector's items
- 18 U.S.C. § 922(d) – unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."
- 45 of 50 States have laws re: Possession of Firearms by People with Mental Illness
- Liability of trustee
  - *U.S. v Booth, et.al.* 111 F.3d 2 [1st Cir. September 1997] – constructive possession
  - *Phillips v. Lucky Gunner, LLC*, No. 14-CV-02822-RPM, 2015WL 1499382 (D. Colo. Mar. 27, 2015)

# **"Born down in a dead man's town"**

## **Framework**

- Appropriateness for Individual
  - Need
  - Recommended by advocate?
  - Government Benefits
  - Financial Impact
- Sole or 3<sup>rd</sup> Party Benefit
- State Laws
- Longevity Projection
- Review Trust, Pol/Proc.
- "Values" Check of Trustee

### **Steven VZ:**

- Has an intellectual/developmental disability.
- SNT beneficiary.
- The leader of his group home loves fireworks and has suggested Steven pay for a firework display for the neighborhood from his trust.

### **Clarence:**

- Conservatorship
- Lives in Section 8 housing.
- Lives for fireworks on the fourth of July.
- His family owns a farm and his uncle is a firefighter.



## Born In The USA – Bruce Springsteen

- Resource: American Pyrotechnics Association - [www.americanpyro.com](http://www.americanpyro.com)
- In many states, the fireworks rules differ by county.
- *DeCambre v Brookline Housing Authority* (D.Mass, No. 14-13425-WGY, March 25, 2015) - HUD ruling



# **“But I Would Not Feel So All Alone”**

## **Framework**

- Appropriateness for Individual
  - Need
  - Relation to Disability
  - Opinion/Prescription
  - Government Benefits
  - Financial Impact
  - Employment
- Federal/State Laws
- Ascertainable Standards
- Review Trust, Pol/Proc.
- Values Check of Trustee

## **Mary Jane**

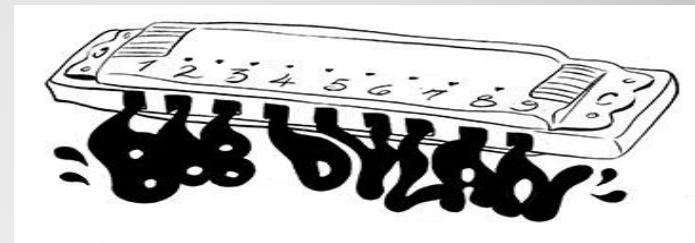
- **Requests Medicinal Marijuana**
- **Has a Spinal Cord Injury**
- **Doctor prescribed**
- **Resides in California**
- **Employed by national corporation**
- **Conservatorship**

## **Bud:**

- **Requests recreational marijuana**
- **Resides in Colorado**
- **“Incentive” Trust**
- **Unemployed**
- **Has stand-alone IRA**
- **Conservator has ‘never inhaled’**

## Rainy Day Woman #12 & 35 – Bob Dylan

- State vs. Federal Law
- Deputy Attorney General James Cole announced that the Department of Justice would not be moving to block the implementation of recreational marijuana regulation in Colorado and Washington leaving enforcement is to the states
- *Cooperative Federalism and State Marijuana Regulation*, 85 U. Colo. L. Rev. 1105 (2014)
- *Coats v. Dish Network, LLC*, 2015 CO 44, (June 15, 2015)



- Probation/Parole
  - Use of marijuana constitutes re-arrest
- Ascertainable Standards
  - Comfort
    - *Restatement (Third) of Trusts* § 50
    - *Rock Island Bank v. Rhoads*, supra at 141-142, 187 N.E. 139 (1933)
  - "Manner In Which They Are Accustomed To Living"
    - *Goss v. McCart*, 847 P.2d 184 (Colo.App.1992)
- "Incentive" Trusts
- Benefits
  - Public Housing Agencies prohibit use of "illegal drugs" as defined at the federal level
  - Food Stamps



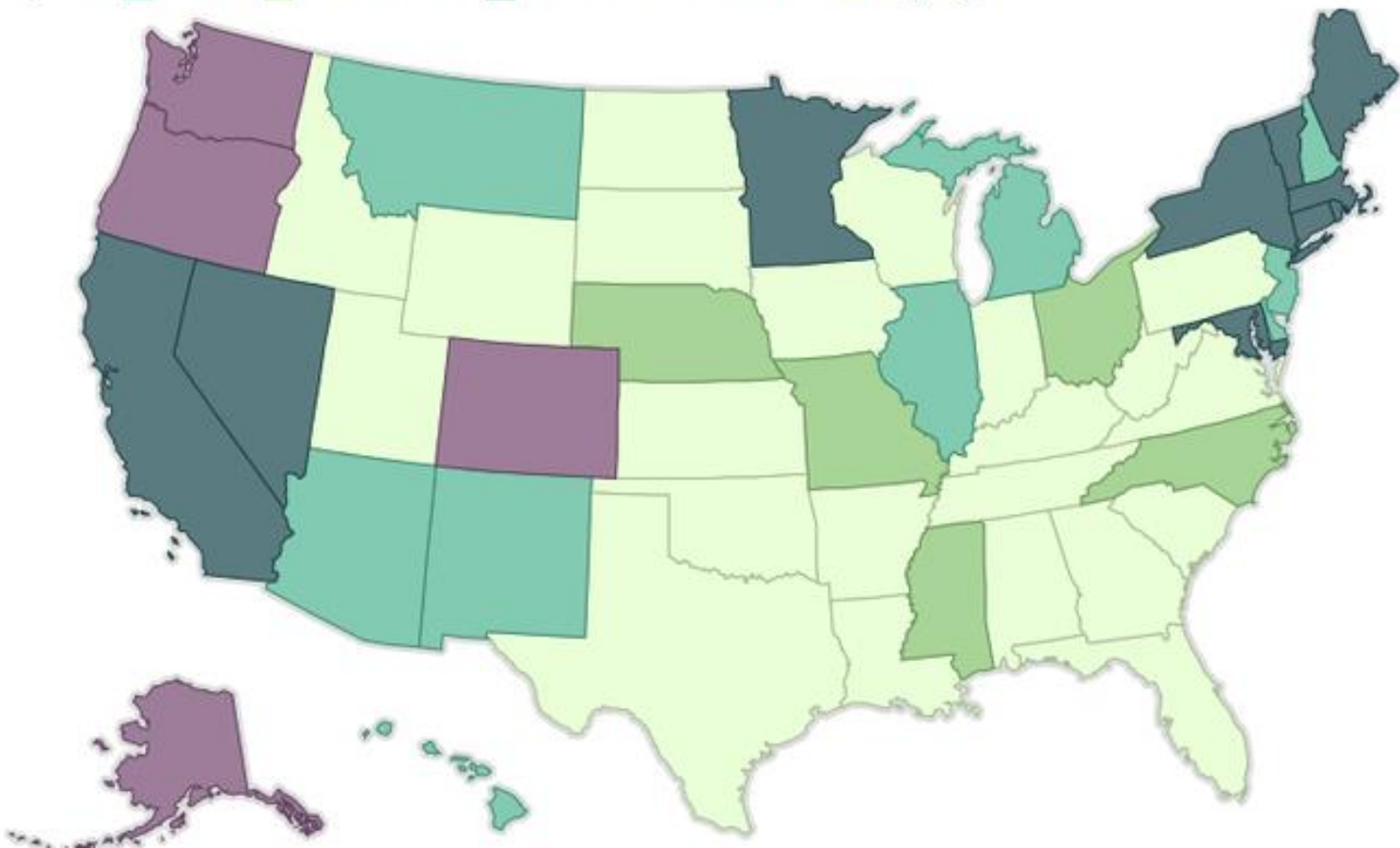


A Business Insider article cites the following benefits of marijuana:

- Treatment of glaucoma.
- Reversal of the carcinogenic effects of tobacco and improvement of lung health.
- Epileptic seizure control.
- Decreased symptoms of a severe seizure disorder known as Dravet's Syndrome.
- Potential cancer abatement.
- Decrease of anxiety.
- Reduced progression of Alzheimer's disease.
- Easement of multiple sclerosis pain.
- Easement of pain, severity and recurrence of muscle spasms.
- Lessened side effects and increased effectiveness of hepatitis C treatment.
- Treatment of inflammatory bowel diseases.
- Relief from arthritis discomfort.
- Boosted metabolism.
- Improvement in the symptoms of Lupus, an autoimmune disorder.
- Increased creativity in the brain.

# Status of marijuana laws in the United States

Legalized Medical Decriminalized Medical and decriminalized Fully illegal



# "Sheepdog, Standing In The Rain"

## Framework

- Appropriateness for Individual
  - Need
  - Relation to Disability
  - Opinion?
  - Financial Impact
- Federal/State Laws
- Review Trust, Pol./Proc.
- Values Check of Trustee

## Paul:

- Conservatorship
- Owns a pit bull
- Lives in Aurora, CO
- Rents an apartment
- Receives no public benefits
- Claims "therapy dog"

## George:

- Pooled trust beneficiary
- Owns home
- Wants to put a carrier pigeon coop on his roof to communicate with KGB

# Hey Bulldog – The Beatles

- *Lewis v. Alexander*, 685 F.3d 325 (3<sup>rd</sup> Cir. 2012)
- Dog ownership laws in Colorado vary from city to city
- C.R.S. § 13-21-124, 25-4-601 et. al.
- NSAR – National Service Animal Registry – [www.nsarco.com](http://www.nsarco.com)





# "I Loved You Since I Knew You"

## Framework

- Appropriateness for Individual
  - Need
  - Relation to Disability
  - Opinion?
  - Financial Impact
- Federal/State Laws
- Sole vs. 3<sup>rd</sup> Party Benefit
- Review Trust, Pol./Proc.
- Values Check of Trustee

### Stewart:

- Father of disabled young girl
- Requests \$300 in singles from daughter's trust
- Co-trustee with professional fiduciary

### Andy:

- Requests funds from conservatorship to travel to Nevada
- Requests \$2,000 distribution to Cat House, Inc. (also in Nevada)

### Gordon Matthew:

- SNT beneficiary
- Consistently has adult movies charged to his cable account bill, submitted to trustee for payment

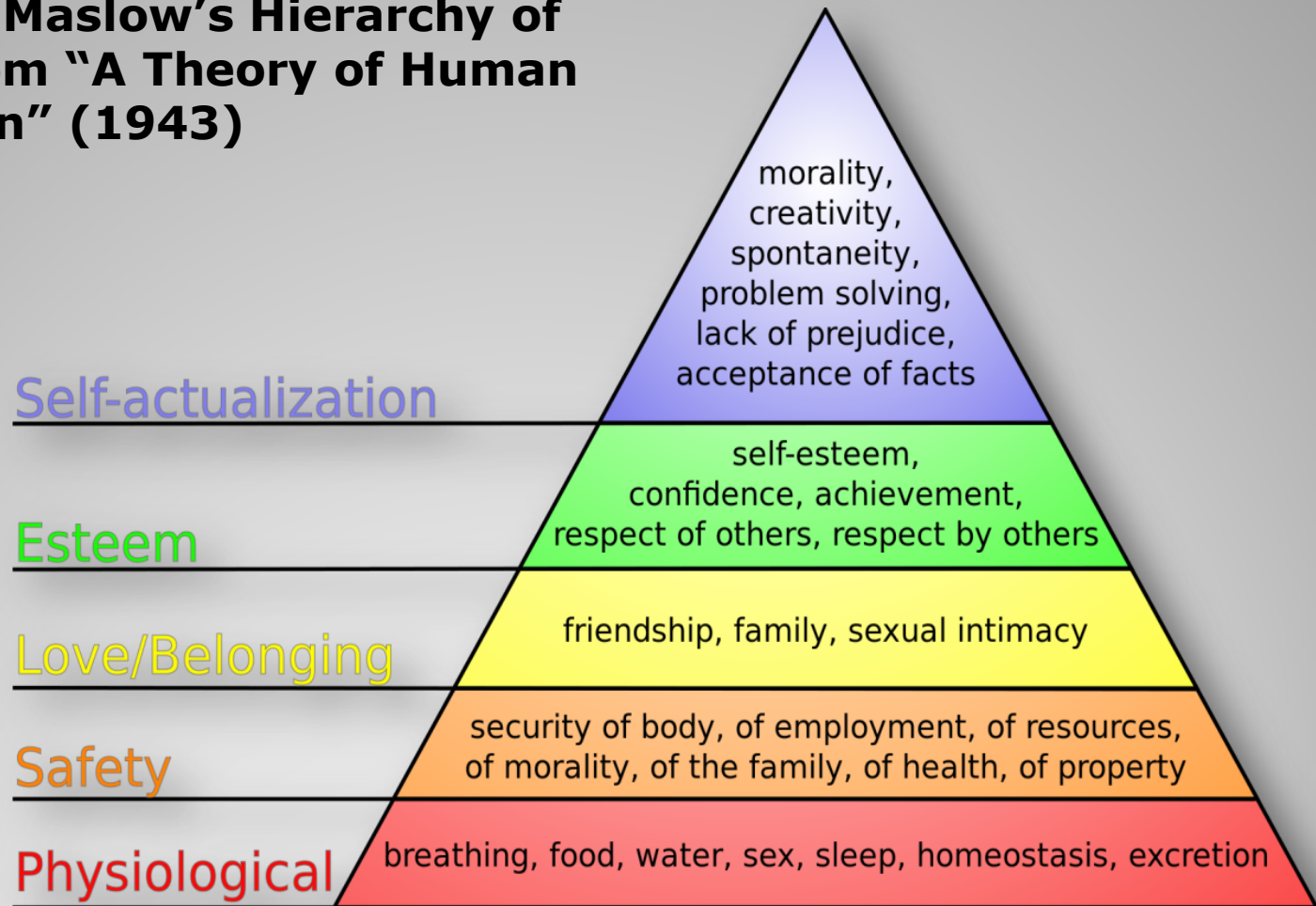
# Roxanne – The Police

We all have a human need for touch, companionship

- See “Right To Intimacy” – Catherine Seal & Michael Kirtland – Elder Law Retreat 2015, 8/29/15 afternoon
- Prostitution is legal in only a few rural counties in Nevada
- *In re Irrevocable Supplemental Needs Trust of Collins*, A04-1018, 2004 WL 2858079 (Minn. Ct. App. Dec. 14, 2004)
- Alternatives:
  - SkweezMe [www.skweezme.com](http://www.skweezme.com)
  - Massage
  - Adaptive exercise
  - Snuggle party [www.thesnuggery.org](http://www.thesnuggery.org), [www.cuddletherapy.com](http://www.cuddletherapy.com)
  - Any social activity



# Abraham Maslow's Hierarchy of Needs from "A Theory of Human Motivation" (1943)



# **“Her picture graced the grime on the door”**

## **Framework**

- Appropriateness for Individual
  - Need
  - Opinion?
  - Government Benefits
  - Financial Impact
- Federal/State Laws
- Review Trust, Pol/Proc.
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## **Liv:**

- Asks for a breast reduction.
- Is having back pain.
- Gets a Medicaid denial and a doctor’s recommendation
- The surgery is \$10,900. She has \$11,000 in SNT

## **Steven:**

- Asks for a gender reassignment surgery
- Trustee asks why and he says so he can live on the main floor of his home with his female roommates-their requirement.
- Trust owned property
- Living in his basement

# Dude (Looks Like A Lady) – Aerosmith Throwing it All Away - Genesis



- May 2014 – Obama administration lifts Medicare ban on sex change operations
- June, 2014 – Massachusetts becomes third state behind California & Vermont to pay for gender reassignment surgery for Medicaid recipient
- Gender dysphoria causes severe depression, low self-esteem
- Federal law prohibits health insurance companies from discriminating against transgender people, and it bars insurers from denying coverage based on pre-existing conditions. Many states are following suit through policy or case law.
- *Ewing v. Ruml*, 892 F.2d 168 (2d Cir. 1989)





# Framework Evaluation

# Appropriateness for the Individual

- Identify the need.
- *Who* is requesting the distribution?
  - Beware of new “players”
  - Mandatory reporting (C.R.S. §18-6.5-108)
- Opinion of beneficiary advocate - outside counsel, case/care manager, investment advisor, family member?
- *When* is the request made or frequency of the request.
- Fiduciary internal policy & procedure.

## Relation to Disability

- Impact on public benefits.
- State vs. federal regulations (‘prices and participation may vary’).

# Professional Recommendation

- Outside resources to consider:
  - Medical Professional
  - Social Worker
  - Mental Health Provider
  - Case/Care Manager
  - Trust Protector/Advisor
  - Family Members
  - Outside Counsel
- Get recommendation in writing!
- Consider obtaining a HIPAA release from beneficiary.



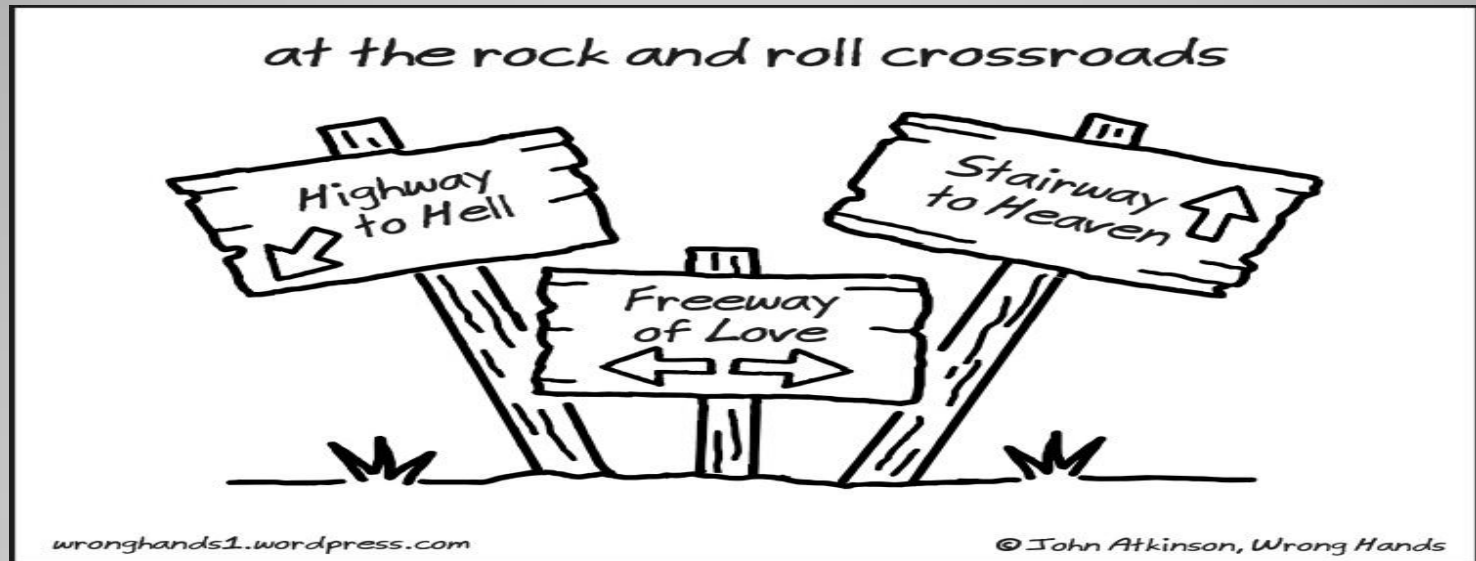
# Financial Plan/Budget

- Consider request at hand vs other necessary expenditures.
- SNTs = wasting trusts.
- “Optimal Outcomes”. (sample Beneficiary Profile form in Appendix)
- Longevity Projections.
- Tax Implications.

## “Values Check”

- Personal experience.
- Religious upbringing.
- Moral context.
- Paternalism (as fiduciaries we are not mom & dad!).
- Opinion of outside professional.

*See Appendix for sample Beneficiary Distribution Request Form.*



# Implementation

# **“There’s a lady who’s sure all that glitters is gold”**

- Have beneficiary put the request in writing
- Utilization of case managers, outside professionals
- Cross-discipline sounding boards
- Guardian Ad Litem
- Petition for Instruction
- Optimal Outcomes

# Stairway To Heaven – Led Zeppelin



- Practice “No, but...”
- Approve a separate expenditure to free up funds for beneficiary
- Document your decision in writing
- Cite applicable law, trust document, public benefit rules
- Appeal process



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