

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision Making

**The court may give a guardian the responsibility of deciding what medical treatment the ward will receive. The guardian must be sure that all decisions about medical treatment are given careful consideration. Each decision should be based on standards of informed consent.**

### Medical Treatment Decisions

#### Does the Ward Participate in Medical Treatment Decisions?

The statute does not require that the ward take part in treatment decisions when decision making authority for those decisions has been given to the guardian. However, many wards are able to understand and give preference. A ward should normally be told about the diagnosis or medical condition, treatment alternatives, prognosis with or without treatment, benefits and risks of treatments, and treatment goals.

#### What Is Informed Consent?

In making decisions on behalf of a ward, the guardian may need to consent to some treatment or course of conduct. Consent should usually be informed consent. "Informed consent" means that consent is valid only if the person giving the consent understands:

- The nature of what is being consented to;
- The benefits and/or the risks of harm; and
- What the available alternatives are if consent is, or is not, given.

The person giving consent should be able to give a reason for selecting a particular alternative.

Informed consent requires that the person giving consent:

- Has the knowledge available to make a reasonable decision;
- Has the capacity or ability to make reasoned decisions based upon information that applies to the situation; and
- Be giving consent voluntarily and without coercion, intimidation or pressure.

#### How Does this Apply in Medical Emergencies?

In a medical emergency, the guardian considers the information available at the time and uses his or her best judgment to make a decision.

## When Must the Court Approve Medical Treatment?

The court must approve major elective surgery or any other non-emergency major medical procedure. These terms are not defined in the statute. As a result, it can be hard to decide if court approval is needed. Major usually means something that is not minor or minimal. Heart surgery would most likely be major surgery, as would an operation on any vital organ. Elective surgery is optional or not required. Usually cosmetic surgery would be considered elective. Any surgery that could be postponed without danger of death or long-term health problems could be considered elective. A medical procedure could be any type of activity that requires instrumentation. For example, drawing blood would be a medical procedure, although not usually a major procedure. Routine physical examinations and procedures under anesthesia do not require court approval, if the anesthesia is required because of the physical or mental disability of the ward. Routine dental examinations and procedures under anesthesia also do not require court approval, if the anesthesia is required because of the physical or mental disability of the ward.

The court must approve sterilization procedures (permanent method of birth control). The court must approve the withholding or withdrawal of life-sustaining procedures as set out in Iowa Code Chapter 144A.

If court approval is or might be needed, guardians should consult with their attorneys. A court may appoint an attorney to represent the ward in a proceeding to approve medical treatment. If the ward objects to a particular medical treatment, it may also be appropriate to obtain court approval.

## Can a Guardian Consent to Limit Treatment?

A guardian can only consent to the withholding or withdrawal of life-sustaining procedures after obtaining court approval. See the handout in the series "Making Decisions to Limit Medical Procedures" for more information about this topic.

## Can a Ward Refuse Treatment?

If the power to make a decision has been given to the guardian by the court and any necessary court approval has been obtained, the ward does not have the right to refuse treatment. The ward may ask the court to review any decision made by the guardian. A guardian should use caution when overriding a ward's refusal. Less restrictive and other alternatives must be considered.

## Medical Treatment Consent Check List

The following questions can be used as a guideline when making medical decisions. Some may not apply to every situation. If the decision-maker is unsure of the answer to any of the questions that apply, he or she may not be ready to give informed consent for a care plan or for medical treatment:

- Is the decision legally the guardian's to make (refer to the court's order setting out the guardian's power)?
- Is there a regular physician? Is the physician aware of the ward's living arrangements and current care or assistance being provided by others?
- Is the ward following the recommended medical procedures? If not, what are the reasons?
- Can the ward remember and correctly follow medical advice, medication schedules, and report warning signs of possible problems?
- Are there laws governing the requested care or treatment?
- Are there less restrictive options? What are they, and have they been considered prior to this current request?
- Has the guardian visited the ward recently? Does the situation the guardian sees reflect the facts being described to the guardian by others?
- Have the guardian and ward talked about the ward's opinion regarding the requested care or treatment?
- Is the requested care or treatment in conflict with prior wishes expressed by the ward, either in a living will or other document or conversation?

- Has the guardian asked the opinions of the ward's family and friends?
- Should the guardian ask the opinions of other experts such as advocates, medical specialists, psychiatrists, or others?
- Is there evidence that the care or treatment being requested discriminates against the ward? Would it be requested if the person were not elderly/developmentally disabled/mentally ill/brain injured?
- Is there agreement among the professionals that have been consulted?
- Does the guardian have the necessary information documented in writing?

These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice. Iowa's law on guardianship and conservatorship is found in Iowa's Probate Code starting at section 633.551.

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*by Iowa Legal Aid,  
1111 9<sup>th</sup> Street, Suite 230,  
Des Moines, IA 50314  
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