

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

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### Medical Treatment Decisions

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

#### Does the Protected Person Participate in Medical Treatment Decisions?

The statute does not require that the protected person take part in treatment decisions when decision-making authority for those decisions has been given to the guardian. However, many protected persons are able to understand and give preference. A protected person 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 protected person, the guardian may need to consent to some treatment or course of conduct. Consent should 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.

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, guardians consider the information available at the time and uses their best judgment to make a decision.

## When Must the Court Approve Medical Treatment?

- The court must approve the withholding or withdrawal of life-sustaining procedures as set out in Iowa Code Chapter 144A (Life-Sustaining Procedures) and 144D (Physician Orders for Scope Of Treatment).
- The court must approve the performance of an abortion.
- The court must approve sterilization procedures (permanent method of birth control).

The court may initially grant a guardian broad or limited approval to make other health care decisions based on the evidence produced at the initial hearing. If health decisions are limited, the guardian would need to get court approval for a health decision not granted. It could be that the court has limited health decisions to health care procedures excluding major surgery.

If court approval is or might be needed, guardians should consult with their attorneys. A court may appoint an attorney to represent the protected person in a proceeding to approve medical treatment. If the protected person 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 article "Making Decisions to Limit Medical Procedures" for more information about this topic.

## Can a Protected Person 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 protected person does not have the right to refuse treatment. The protected person may ask the court to review any decision made by the guardian. A guardian should use caution when overriding a protected person'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 decision 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 protected person's living arrangements and current care or assistance being provided by others?
- Is the protected person following the recommended medical procedures? If not, what are the reasons?
- Can the protected person 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 protected person recently? Does the situation the guardian sees reflect the facts being described to the guardian by others?
- Have the guardian and protected person talked about the protected person's opinion regarding the requested care or treatment?
- Is the requested care or treatment in conflict with prior wishes expressed by the protected person, either in a living will or other document or conversation?
- Has the guardian asked the opinions of the protected person'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 protected person? 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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