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CHAPTER 6

# GUARDIAN OF THE PERSON

The court appoints a guardian of the person to make personal decisions for the disabled person. Usually, a guardian of the person makes all necessary decisions about the disabled individual's everyday life, from where that person will live to what kind of medical treatment she will receive. After the court appoints a guardian of the person, the guardian has the same rights, powers and duties that a parent has toward an unemancipated minor child.

## WHAT ARE THE POWERS AND DUTIES OF THE GUARDIAN OF THE PERSON?

Each court order appointing a guardian of the person must list the powers and duties given to the guardian. The law states that the court should limit the guardian's authority to those powers which are necessary to meet the needs of the disabled person. This is called a **limited guardianship** order.

Sometimes the court states specifically what the guardian can and cannot do; other times the order says that the guardian has all of the powers listed in the guardianship statute.

## DUTIES OF A GUARDIAN OF THE PERSON

**T**he duties of a guardian of the person may vary from case to case. Generally, the court can grant the guardian the authority to—



- ◆ decide where the person will live;
- ◆ provide for the care, comfort, education, and social and recreational needs of the person;
- ◆ care for the clothing, furniture, vehicles and other personal effects of the person;
- ◆ manage the funds of the person if there is no guardian of the property;
- ◆ request funds for the person's care and needs from the guardian of the property; and
- ◆ consent or withhold consent to medical care, including admission to a hospital or nursing home, with some limitations.

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### WHAT STANDARD SHOULD THE GUARDIAN USE IN MAKING DECISIONS?

The guardian stands in the shoes of the disabled person. Therefore, the guardian should be guided by the wishes of the person to the greatest extent possible, consulting with her about decisions. If it is impossible to do so, the guardian should act in the best interest of the person.

### WHEN MUST THE GUARDIAN SEEK SPECIAL PERMISSION OF THE COURT?

The order appointing the guardian describes what the guardian can and cannot do. Unless the order says otherwise, the guardian of the person can act without special permission of the court. However, there are some instances in which the guardian *must* seek special permission of the court:

#### Life Threatening Treatment

The court must authorize the guardian's consent or withholding of consent to medical treatment which poses a substantial risk to the life of the disabled person.

✓For example, a guardian would have to get court authorization to consent to major heart surgery, or to refuse a feeding tube for a person who has severe Alzheimer's Disease.

Usually the guardian will have to approach the court, either in an informal letter or in a formal motion, when the need for the treatment arises. However, the court can give the guardian the authority to make decisions about life sustaining medical

## INVOLUNTARY COMMITMENT

The guardian cannot consent to the admission of the person to a mental institution. A standard procedure must be followed for anyone to be involuntarily admitted, or committed, to a mental institution, even if there is a guardian. A physician must examine the person and certify that—

- the person has a mental disorder, needs inpatient care or treatment;
- presents a danger to the life or safety of the person or others;
- is unwilling to be admitted voluntarily; and
- there is no less restrictive form of intervention available that is consistent with the welfare and safety of the person.



treatment in advance. The court may do this at the time it appoints a guardian if—

- ◆ the disabled person has executed an advance medical directive (see page 16) which allows the guardian to make such medical decisions, or
- ◆ the guardian is the spouse, adult child, parent or sibling of the disabled person.

This is because under the Health Care Decisions Act, these relatives would have the authority to consent or refuse consent to the provision of life sustaining treatment to the disabled person, even if there was no guardian.

### **Change of Abode**

The court must authorize moving the person from one type of living arrangement to another.

- ✓ For example, if the guardian wishes to move the person from a private home to a nursing home, or from an assisted living home to a nursing home, she must ask the court's permission.

The guardian does not need permission to move the person from one nursing home to another, however.

### **MUST THE GUARDIAN OF THE PERSON FILE AN ANNUAL REPORT WITH THE COURT?**

Yes. A guardian of the person must file a report with the court every year. The report is usually due on the anniversary date of the appointment of the guardian. There is a standard form which the guardian can obtain from the county court clerk's office. In it, the guardian describes the disabled person's physical condition, living situation, and reports any changes that have occurred since the last report. The guardian may also recommend whether or not the guardianship should continue.



### **IS THE GUARDIAN OF THE PERSON ENTITLED TO A FEE?**

No. A guardian of the person is not entitled to a fee from the person's funds for her services unless she is also providing care and maintenance to the person. In that case, the guardian of the person may ask the guardian of the property for reimbursement for such things as the cost of the person's room and board.



*The guardian should discuss decisions with the disabled person, if possible.*



# WHAT IS A PUBLIC GUARDIANSHIP?

**A** **public guardianship** is one in which the director of the local Department of Social Services or the director of the local agency on aging is appointed to serve as guardian of the person.

If the disabled person is younger than 65 years old, the director of the Department of Social Services is appointed to be guardian; if the person is 65 or older, the director of the Maryland Office on Aging or the local agency on aging is appointed guardian. Public guardians may only serve as guardian of the person, not as guardian of the property. If there is no one else willing to act as guardian of the property, the court will usually appoint a private attorney, who will take a fee from the guardianship estate of the disabled person.

## **WHEN IS A PUBLIC GUARDIAN APPOINTED?**

A public guardian is appointed only when there is no family member or friend willing or able to serve as guardian. In these cases, a staff person from the agency fills the role of the guardian, visiting the disabled person on a regular basis and making sure that her needs are met. The public guardian does the same things that a private guardian does: buys food or clothing for the

person from the person's funds, signs consent forms for her medical care, and makes decisions about where the person is to live.

## **WHAT IS THE ADULT PUBLIC GUARDIANSHIP REVIEW BOARD?**

An Adult Public Guardianship Review Board is established in each county of Maryland and the City of Baltimore to review public guardianships. The Adult Public Guardianship Review Board (APGRB) assesses each public guardianship case in that county twice a year. The purpose of the board is to ensure that the public guardian is doing a good job for the disabled person. The disabled person has the right to be present at the review, if she is able, and to be represented by an attorney. The board gathers information, and hears testimony from the disabled person, the disabled person's attorney and anyone else who has important information about the case. The board decides whether the guardian should be doing anything differently, suggests ways to address problems which arise, and recommends to the court whether the guardianship should be continued, modified or terminated. The court may or may not follow the recommendation of the board. The APGRB is made up of volunteers and local government employees.