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NF05-619 Decision Making As A Guardian

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NebFact



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Decision Making As A Guardian

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This NebFact, the fourth in a series, discusses legal guardianship and decision making.

Guardians are asked to make decisions regarding the individual for whom they have been appointed.

A fundamental aspect of decision making as a Guardian is knowing the Ward and having regular contact. Without this firsthand knowledge, understanding the impact of decisions on the Ward will be difficult.

Informed Consent

Guardians should make informed decisions based on:

- Adequate information
- Independent judgment
- Non-biased choices

Each decision should be evaluated using the following criteria:

- What exactly is the request and what does it mean in lay language?
- What condition necessitates the treatment or action?
- Has the individual been informed?
- Are there any preferences of the Ward that can be ascertained, either currently or prior to the appointment of a Guardian?
- What is the expected outcome of this decision?
- What is the benefit of this decision?

- Why now, not later?
- What will happen if no decision is made?
- Are there any alternatives to this request?
- Is this the least-restrictive alternative?
- What are the risks in this decision?
- What justifies a medical decision?
- Has a second opinion been rendered?
- What additional information or input is needed from family members or other professionals to make this decision?

If additional guidance is needed to reach a decision, the Guardian should consult with a professional (doctor, lawyer, accountant, etc.).

Substituted Judgment

The Ward may express preferences regarding some decisions the Guardian may face, or the Ward may have expressed such preferences in the past in either written or verbal form. Substituted judgment is the process of using these statements in making decisions based on what the Guardian believes the individual would have made. This process promotes the underlying values of self-determination and well-being of the Ward.

Best Interest

When the Guardian is unable to establish the Ward's prior or current wishes, the best interest standard can be used in decision making. In this process, the Guardian makes an independent decision on behalf of the Ward that is in the Ward's best interest. "Best interest" should promote the Ward's well-being as any reasonable person might make the decision for himself or herself if he or she were in the Ward's position. Making decisions as a Guardian will become easier with practice and with increased, ongoing knowledge of the Ward and his/her circumstances.

Conflict of Interest

It is important to recognize and accept that the decisions must focus on the Ward and the effects they will have on the Ward, not on the needs of the Guardian or others involved in the Ward's life. A Guardian must avoid even the appearance of a conflict of interest or impropriety when dealing with the Ward's needs. This applies to personal decisions as well as those decisions made regarding the management of the Ward's funds and estate.

Impropriety or conflict of interest arises when the Guardian has personal or business interests that might be perceived as self-serving or adverse to the position or the best interest of the Ward. Some guidelines to consider are:

- It is the Guardian's duty to coordinate and assure the provision of services rather than provide them.
- The Guardian needs to remain free to advocate for quality services and must be independent from all such providers of service.
- The Guardian shall not commingle the funds of the Ward with other funds.
- The Guardian shall not sell or transfer any property to himself/herself. Nor can the Guardian sell or transfer property to benefit a relative or friend at the expense of the Ward. All other sales or transfers of any property must be fair and for full value.

Guardians may face transitions in their traditional relationships as they do their job. Again, the focus must remain on the Ward. If appointed as Guardian because there was no one familiar with the Ward who could or would be considered for appointment, the Guardian may find himself/herself to be basically a stranger to the Ward. As such, careful attention should be paid in the beginning of the relationship to get to know the Ward and the Ward's history and current life so that accurate information and knowledge is available when a decision or action is requested.

A Guardian may be a family member. As a Guardian this will be helpful because of knowing the Ward's history. The Guardian will still need to spend time familiarizing himself/herself with legal and financial documents previously completed by the Ward. Other family members may try to pressure or influence decisions that are not necessarily in the Ward's best interests. Keeping the focus on the Ward is critical in making appropriate decisions.

A parent who becomes a Guardian for a son or daughter also faces a change in roles. Parents must recognize that Guardianship is not a continuation of parenthood, but rather a new job with all of the responsibilities that have been discussed. It is important to see the Ward as an adult who has a right to live in the least-restrictive alternative with the opportunity to experience life, gain skills and grow as an individual.

Any person choosing to become a Guardian should consider the time it will take and whether he or she is willing to do the work that it will take to do the job. This is important whether the person is Guardian to one or several Wards. The time commitment to make good decisions and the commitment to the Ward are both significant. The Ward deserves to be supported and protected by someone who will spend the time necessary.

References

National Guardianship Association. (1998). *A Model Code of Ethics for Guardians*. Tucson, Arizona:NGA

National Guardianship Association. (2003). *Standards of Practice*. Tucson, Arizona: NGA.

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