Guardianship of the Person

TAKE CARE

Duties &
Responsibilities

GUARDIAN OF THE PERSON
SUMMARY OF RESPONSIBILITIES

Initially you must:

- Review the Guardianship of the Person Training materials (written guide and video) as soon as possible.
- Review the Guardianship Forms materials (written guide and video).
- Appear for the guardianship hearing, if required.

As soon as possible after the Judgment is entered, you must:

- Qualify before the County Surrogate. You CANNOT act as guardian until you qualify.
- Obtain Letters of Guardianship and, if needed, Short Certificates.
    - In most cases, fees must be paid to the Surrogate for Letters and/or Short Certificates.

After qualifying as guardian of the person, you must:

- Advocate for the independence of the incapacitated person.
- Discuss decisions with the protected person, and consider their input and preferences.
- If the incapacitated person's preferences are unknown or potentially harmful, make decisions based on what you believe is in their best interest.
- Arrange services for the incapacitated person's health, education, and welfare.
- Make medical decisions for the protected person, considering the following:
    - conditions that make treatment necessary;
    - incapacitated person's preference;
    - risks and benefits of all alternatives;
    - time considerations for taking action;
    - less restrictive alternatives; and
    - additional opinions, if helpful.
- Visit with the incapacitated person frequently—at least once every three months unless otherwise ordered by the court.
- Provide for appropriate activities and social opportunities for the protected person.
- File periodic reports as to the well-being of the incapacitated person, if required.
- Inform the Surrogate of any major changes in the health or welfare of the protected person.
- Notify the Surrogate of any changes to your address, or to the address of the incapacitated person.
- Inform the Surrogate upon the death of the incapacitated person.

You must NOT:

- Take payment for your services, unless authorized in the Judgment.
- Entrust your guardianship duties to anyone else, unless authorized by statute.

TABLE OF CONTENTS

1. INTRODUCTION 1

1.1 Guiding Principles 1

1.2 Responsibilities of a Guardian of the Person 2

1.3 Letters of Guardianship 2

1.4 Short Certificates 2

2. SUBSTITUTED JUDGMENT/BEST INTEREST 3

2.1 Substituted Judgment 3

2.2 Best Interest Standard 4

2.3 Tough Decisions 4

3. INCAPACITATED PERSON'S RIGHTS 5

4. COORDINATING SERVICES 5

5. MEDICAL CONSIDERATIONS 6

5.1 Informed Consent 7

5.2 Determine Conditions 7

5.3 Protected Person's Preference 7

5.4. Alternatives and Timing of Decision-Making 7

5.5 Least Restrictive Decision 8

5.6 Additional Opinions 9

5.7 Seek Resources in Family, Friends and Professionals 9

5.8 Written Documentation 9

5.9 Advance Directive for Healthcare and Designation of Healthcare Proxy 9

6. VISITING WITH THE PROTECTED PERSON 10

7. ACTIVITIES AND SOCIALIZATION 11

8. RESOURCES FOR GUARDIANS AND PROTECTED PERSONS 11

9. GUARDIAN REPORTING 12

10. GUARDIANSHIP MONITORING PROGRAM (GMP) 13

11. PAYMENT FOR SERVICE AS GUARDIAN OF THE PERSON 14

12. ACTION REQUIRED UPON PROTECTED PERSON'S DEATH 14

FREQUENTLY ASKED QUESTIONS (FAQ) 15

GLOSSARY OF TERMS 17

1. INTRODUCTION

Some legal and non-legal language in the realm of guardianships may be new to you. For your reference, a Glossary of Terms is included in this guide. The terms defined in this glossary are in bold font, italicized and marked with a dagger symbol (†) when they first occur in the text.

After viewing the contents of this guide you will be able to:

IT IS EXTREMELY IMPORTANT THAT PROSPECTIVE GUARDIANS BECOME FAMILIAR WITH THE DUTIES OF GUARDIANSHIP BEFORE ACCEPTING APPOINTMENT.

- Fully consider the major responsibilities of being a ***guardian of the person***†
- Know the difference between ***substituted judgment***† and ***best interest***†
- Identify the difficulties involved in making decisions for the ***incapacitated person***†
- Understand guardian reporting requirements

Also, as part of the ***qualification***† process, you must file an acceptance that includes an acknowledgment that you have received these materials, understand the contents, and knowingly agree to take on the duties of guardianship.

1.1 Guiding Principles

In exercising the authority conferred upon you as guardian, and maximizing the quality of life of the ***protected person***†, you should consider the guiding principles noted below.

1) Ascertain and consider those characteristics of the protected person which define his or her uniqueness and individuality, including but not limited to likes, dislikes, hopes, aspirations and fears;
2) encourage the incapacitated person to express preferences and participate in decision-making;
3) give appropriate deference to the expressed wishes of the protected person;
4) protect the incapacitated person from injury, exploitation, undue influence and abuse;
5) promote the protected person's right to privacy, dignity, respect and self-determination; and
6) make reasonable efforts to maximize opportunities and individual skills to enhance self-direction.

† See Glossary of Terms

1.2 Responsibilities of a Guardian of the Person

You want to assist the protected person in navigating the world around them, ensuring that they handle the tasks they are capable of handling on their own so that they can continue to exercise independence as much as is safely possible.

For example, if the protected person is capable of maintaining their home without the assistance of a housekeeper or in-home care provider, allow them to do that. Try to allow them as much input into your decisions as possible.

AS THE GUARDIAN OF A DISABLED OR ELDERLY ADULT, IT IS YOUR JOB TO ENSURE THAT THE INCAPACITATED PERSON MAINTAINS AS MUCH INDEPENDENCE AS POSSIBLE.

1.3 Letters of Guardianship

Entry of the ***Judgment***† by the ***Superior Court judge***† establishes the guardianship. Until the guardian qualifies before the ***County Surrogate***†, however, he or she cannot act as guardian. For example, a guardian who has not yet qualified cannot make medical decisions for the protected person.

To qualify, the guardian must sign certain documents reflecting acceptance of the guardianship. Modest fees must be paid to the Surrogate for the issuance of ***Letters of Guardianship***†. You should keep these original letters in a secure location, such as a safe or safety deposit box, and should not turn them over to any other person or facility. Qualification may occur immediately following the guardianship hearing, and must happen as soon thereafter as possible.

UNTIL THE GUARDIAN QUALIFIES BEFORE THE COUNTY SURROGATE, HE OR SHE CANNOT ACT AS GUARDIAN.

1.4 Short Certificates

When you qualify, or at any time during the guardianship, you may apply to the Surrogate for ***short certificates***†. Short certificates contain the basic information set forth in the Letters of Guardianship, stating that by Judgment of a particular date, you were appointed as guardian of the person of a named incapacitated person. A short certificate will also state that as of the date it was issued, the guardianship remains in effect. As guardian of the person, you may obtain additional up-to-date short certificates to provide to doctors, care facilities, and other institutions as proof of your continuing authority.

† See Glossary of Terms

2. Substituted Judgment/Best Interest

Your role as the guardian is to listen to the incapacitated person and ensure that their preferences are being met as long as it does not cause harm. You are in a position to make decisions for the protected person in one of two ways:

1. using substituted judgment; or
2. based on the best interest standard.

2.1 Substituted Judgment

When making decisions using substituted judgment, you are doing exactly as it sounds: making the decision that the protected person would make if they had the capacity to do so. To the extent the protected person can understand the issue at hand, you have an obligation to discuss the decision you are going to make with the protected person and listen to their preferences in that situation.

SUBSTITUTED JUDGMENT IS APPLIED WHEN YOU MAKE THE DECISION THAT THE PROTECTED PERSON WOULD MAKE IF THEY HAD THE CAPACITY TO DO SO.

For example, if the doctor is recommending that the protected person have surgery to put in a pacemaker, you should discuss this with the protected person. Try to put it in terms that they have the ability to understand. Discuss the benefits and the consequences of the decision you are about to make. Listen to their preferences and reason for making the decision.

When using substituted judgment it is also helpful to talk to other family members or friends about conversations they have had with the protected person.

- Has the protected person ever talked about their preference for medical treatment?
- Do they want all measures taken to prolong their life or do they want only pain management?

YOUR ROLE IS TO ENSURE THAT THEIR PREFERENCES ARE BEING MET AS LONG AS IT DOES NOT CAUSE HARM.

Your job is to determine what their preferences were when they were still capable of making those decisions.

2.2 Best Interest Standard

Making decisions using substituted judgment may be easier for a guardian of the person dealing with someone who becomes incapacitated later in life as opposed to an adult who has been disabled since birth.

When dealing with an adult who becomes incapacitated later in life, they likely had capacity and had the ability to understand cause and effect relationships. As such, they had likely discussed their preferences before becoming incapacitated and you may have a better understanding of what they would want.

YOU WOULD BE MAKING YOUR DECISION BASED ON WHAT YOU BELIEVE TO BE IN THE PROTECTED PERSON'S BEST INTEREST.

With an individual who has been disabled since birth, this may be more difficult. In those situations (or in situations where the incapacitated person's preferences may cause serious harm or injury), you would be making your decision based on what you believe to be in the protected person's best interest.

2.3 Tough Decisions

It is never easy to make a decision for another adult that goes against their wishes, but you must keep in mind that your friend or family member does not have the ability to truly understand the consequences of their decision. Ultimately, the decision is yours. If you are making a decision that is in contrast to the stated or demonstrated preferences of the incapacitated person, you should be prepared to defend that decision.

THE COURT APPOINTED YOU AS THE GUARDIAN OF THE PERSON—TO MAKE THE TOUGH DECISIONS.

3. Incapacitated Person's Rights

The rights that the protected person maintains, if any, will be addressed in the Judgment. The Judgment may state that the protected person is unable to manage himself or his affairs and requires a general guardian of the person.

TO UNDERSTAND WHICH RIGHTS ARE RETAINED BY THE PROTECTED PERSON, YOU SHOULD ALWAYS CONSULT THE JUDGMENT.

With a ***limited guardianship***[†], however, the Judgment may provide that the incapacitated person is only unable to govern herself as to particular areas, like medical decisions requiring informed consent and legal affairs, and in all other areas retains capacity. Or, a Judgment appointing a limited guardian may be structured differently, providing that the incapacitated person is incapacitated in all areas except for those that are listed, for example decisions as to socialization and recreation.

4. Coordinating Services

As the guardian of the person, it is your responsibility to ensure that the protected person is receiving appropriate medical care, proper education and that their overall health and welfare is protected. You will be responsible for coordinating medical appointments and being aware of the medical needs of the incapacitated person.

- Do they need hearing aids? What about dentures? Are they diabetic?

- Maybe the incapacitated individual is a young adult with disabilities.

    - Can they still attend school?
    - What about attending life skills training classes on topics such as cooking or balancing a checkbook?

  If the protected person has the ability to benefit from this type of training, then it is your responsibility to coordinate these services for him or her.

IT IS YOUR RESPONSIBILITY TO ENSURE THAT THE PROTECTED PERSON IS RECEIVING APPROPRIATE MEDICAL CARE AND EDUCATION, AND THAT THEIR OVERALL HEALTH AND WELFARE IS PROTECTED.

[†] See Glossary of Terms

5. MEDICAL CONSIDERATIONS

The National Guardianship Association (NGA) provides an online outline that may be very useful when trying to make medical decisions on behalf of the protected person [HTTP://WWW.GUARDIANSHIP.ORG/DOCUMENTS/STANDARDS_OF_PRACTICE.PDF].

NGA Standard 6 – Informed Consent[†]
I. Decisions the guardian makes on behalf of the person under guardianship shall be based on the principle of Informed Consent.
II. Informed Consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
III. Informed Consent is based on adequate information on the issue, voluntary action, and lack of coercion.
IV. The guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if he or she were not under guardianship.
V. In evaluating each requested decision, the guardian shall do the following: A. Have a clear understanding of the issue for which informed consent is being sought, B. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative, C. Determine the conditions that necessitate treatment or action, D. Encourage and support the person in understanding the facts and directing a decision, E. Maximize the participation of the person in making the decision, F. Determine whether the person has previously stated preferences in regard to a decision of this nature, G. Determine why this decision needs to be made now rather than later, H. Determine what will happen if a decision is made to take no action, I. Determine what the least restrictive alternative is for the situation, J. Obtain a second medical or professional opinion, if necessary, K. Obtain information or input from family and other professionals, and L. Obtain written documentation of all reports relevant to each decision.

[†] See Glossary of Terms

5.1 Informed Consent

As a guardian, you should have a clear understanding of the issue for which informed consent is being sought. If needed, ask as many questions as it takes to feel comfortable that you understand what is being proposed for the incapacitated person.

5.2 Determine Conditions

Determine the conditions that make treatment or action necessary. In other words, what is the underlying problem that is causing the doctor to suggest this form of treatment?

ASK AS MANY QUESTIONS AS IT TAKES TO FEEL COMFORTABLE THAT YOU UNDERSTAND WHAT IS BEING PROPOSED FOR THE INCAPACITATED PERSON.

For example, what if the incapacitated person has started exhibiting behavioral outbursts and aggressiveness towards caregivers and the doctor wants to prescribe an anti-psychotic medication that has potential for significant side effects? You might first want to consider if these outbursts are because the incapacitated person is in pain, and if so, whether over the counter pain medication would be the better solution.

5.3 Protected Person's Preference

DETERMINE WHETHER THE INCAPACITATED PERSON HAS PREVIOUSLY STATED PREFERENCES IN REGARD TO A DECISION OF THIS NATURE.

Advise the protected person of the decision that is required and determine, to the extent possible, their current preferences. Talk with family and friends of the protected person to determine whether he or she has previously stated preferences in regard to a decision of this nature. You can reference the section 2. Substituted Judgment/Best Interest in this guide for more guidance in approaching the decision-making process.

5.4. Alternatives and Timing of Decision-Making

Determine the expected outcome of each alternative. Using the example of the prescription of anti-psychotic medication versus simple medication, is it better to consent to the prescription or to request over the counter pain medication first to rule out the need for pain management? In addition to the expected outcomes, you should also consider the benefits and risks of each alternative.

Sometimes it can be difficult to determine when, or if, it is best to take action. There are times when a decision to wait to take action or to take no action at all can be appropriate. Weigh all options carefully before making a decision.

It may be that the protected person is elderly and was presented with an option to have a pacemaker in the past. At the time, the protected person had capacity and determined that she did not believe the risks of the procedure were worth the benefit. In this situation, you would want to consider her reasoning at the time she made this decision.

5.5 Least Restrictive Decision

When faced with a decision, you should determine what the least restrictive alternative is for the situation.

- In the prior example, over the counter pain medication would be less restrictive than prescription anti-psychotic medication. Thus, this less restrictive option should be considered before consenting to the more restrictive alternative.

- Living at home with caregivers as opposed to placement in an assisted living facility or nursing home is another example of a less restrictive alternative.

MAKE SURE THAT THE INCAPACITATED PERSON RECEIVES THE LEAST RESTRICTIVE FORM OF INTERVENTION SO THAT HE OR SHE MAINTAINS AS MUCH INDEPENDENCE AS POSSIBLE.

Less restrictive options should only be selected when they are sufficient to safeguard the protected person, and more restrictive alternatives must be considered when less restrictive choices prove ineffective.

- Returning to the prior example, if over the counter medication is attempted but has no impact on the protected person's behaviors, it may then be appropriate to consider the more restrictive option of prescription medication.

- If a protected person resides at home with caregivers and his condition deteriorates such that this arrangement becomes unsafe, then you should consider a more restrictive option like an assisted living facility.

5.6 Additional Opinions

Get additional opinions, if necessary. The same rights you have over your own person, you have over the protected person. If you feel you need a second or third medical opinion before making a decision for treatment, by all means, seek additional opinions.

5.7 Seek Resources in Family, Friends and Professionals

It may be helpful to obtain information or input from family, friends or professionals. Again, this goes back to making a decision using best interest versus substituted judgment. It is often beneficial to seek out assistance within your community. For example, all hospitals will have a bioethics team available to consult with you about a particular medical procedure.

BE FAMILIAR WITH THE RESOURCES AVAILABLE WITHIN YOUR COMMUNITY AND USE THEM.

5.8 Written Documentation

Get written documentation of all reports relevant to each decision. Keep in mind that your decisions are open to scrutiny by others, such as other family members, court-appointed counsel, or the courts. You want to make sure that you can always support a decision you have made on behalf of the incapacitated person.

5.9 Advance Directive for Healthcare and Designation of Healthcare Proxy

THE JUDGMENT MAY VOID THE PROXY DESIGNATION BUT INSTRUCT THE GUARDIAN TO ADHERE TO THE PREFERENCES EXPRESSED IN THE HEALTHCARE DIRECTIVE.

Some individuals will have executed an ***advance directive for healthcare***[†] prior to becoming incapacitated. The advance directive typically appoints someone, who may or may not be the person later appointed as guardian, to serve as the proxy for healthcare decisions.

Often, but not always, the designation of the ***healthcare proxy***[†] will be voided upon entry of the Judgment. For example, if the person expressed a preference to have certain measures taken to prolong life, prior to becoming incapacitated, then the guardian would consider that preference in making medical and end-of-life care decisions. For more information on this topic, see the Frequently Asked Questions (FAQs) in this guide.

[†] See Glossary of Terms

6. Visiting with the Protected Person

MAINTAIN SUFFICIENT CONTACT WITH THE PROTECTED PERSON TO KNOW HIS OR HER HEALTH STATUS, CAPACITIES AND NEEDS.

Under New Jersey law—unless otherwise ordered—a guardian of the person shall personally visit the incapacitated person not less than once every three months. The guardian must maintain sufficient contact with the protected person to know his capacities, limitations, needs, opportunities and physical and mental health.

If there is a reason why visiting with the protected person regularly will not be suitable, then you may want to request that the Judgment set forth your visitation obligation. See the examples noted below.

- Some individuals with mental illness may be upset by disruption to their standard routine, and the treating psychologist may recommend staying in touch by phone instead of visiting in person.

- Some guardians reside at a substantial distance from the protected person, and they may visit twice annually for extended periods, rather than once every three months.

The law makes clear the obligation of a guardian to maintain consistent communication with the protected person and to effectively oversee his or her well-being. Depending on the circumstances of the case, a protected person may need more frequent, or less frequent, in-person visits, but this should be addressed in the Judgment whenever possible.

7. Activities and Socialization

As guardian, you have a duty to make sure that appropriate activities and socialization opportunities are provided for the incapacitated person to the extent that the protected person has the ability to enjoy them. You should determine what the incapacitated person likes to do.

YOU HAVE A DUTY TO MAKE SURE THAT APPROPRIATE ACTIVITIES AND SOCIALIZATION OPPORTUNITIES ARE PROVIDED.

- If he is an avid reader, make sure that reading material is available.
- If he previously read books and magazines but his vision has deteriorated and he can no longer read printed materials, then obtain recorded books instead.
- If she likes to listen to music, arrange for access to music (via radio, CDs, MP3s) or an outing to a concert.

8. Resources for Guardians and Protected Persons

In New Jersey, the *Aging and Disability Resource Connection*, a division of the State of New Jersey Department of Human Services, assists guardians and other caregivers in finding benefits and services. The online search engine enables you to look for services and providers based on service categories and/or areas served.

AGING AND DISABILITY RESOURCE CONNECTION

- HTTP://WWW.ADRCNJ.ORG/

DISABILITY RESOURCES

- HTTP://WWW.DISABILITYRESOURCE.ORG/

There are also nonprofit organizations, like *Disability Resources*[‡], that provide lists of national, state, and county agencies that provide services for individuals with disabilities and/or their families and caregivers. You will find links for information about many conditions such as Epilepsy, Tourette syndrome, Alzheimer's disease as well as other organizations such as VSA New Jersey (State organization focused on Arts and Disability) and the Special Olympics New Jersey.

[‡] Disability Resources is not affiliated with the Judiciary or the Department of Human Services. It is mentioned in this guide solely as an example and is not recommended or endorsed by the State.

9. Guardian Reporting

Generally, an individual appointed as a guardian of the person of an incapacitated person must periodically report to the court regarding the guardianship. Most guardians of the person are required to report every twelve (12) months; however, the Superior Court judge who established the guardianship may order a different reporting frequency.

> YOU MUST CONSULT THE JUDGMENT TO DETERMINE WHEN YOU ARE REQUIRED TO SUBMIT A REPORT OF WELL-BEING TO THE COURT.

The ***Report of Well-Being***[†], like any guardianship report, must be filed along with a ***Report of Guardian Cover Page***[†]. If there are multiple co-guardians of the person, all co-guardians may sign a single report, or may file separate reports if preferred. To assist you in determining how much information must be presented, you should review the separate Guide to Guardianship Reporting Forms.

Detailed instructions are provided prior to the online form, which can be completed on a computer and then printed (or completed by hand). Both report forms are posted online on the Judiciary website, as listed below.

Report of Guardian Cover Page
HTTP://WWW.NJCOURTS.GOV/CIVIL/FORMS/11797_GRDNSHP_RPT_GRDN_COVER_PG.PDF

Report of Well-Being Form
HTTP://WWW.NJCOURTS.GOV/CIVIL/FORMS/11798_GRDNSHP_RPT_WELL_BEING.PDF

Questions about filing guardianship reporting forms should be directed to the appropriate Surrogate's Court; see the link below for contact information.

Directory of New Jersey County Surrogates
HTTP://WWW.NJCOURTS.GOV/DIRECTORY/SURROGATEROSTER.PDF

For further information on periodic reporting requirements, see the Frequently Asked Questions (FAQ) section in this guide.

[†] See Glossary of Terms

10. Guardianship Monitoring Program (GMP)

The New Jersey Judiciary ***Guardianship Monitoring Program (GMP)***[†] is a statewide court program established in 2013 to monitor and support guardians in their handling of the affairs of incapacitated individuals. The program is committed to helping ensure that these vulnerable members of society are treated with dignity and respect, while also assisting guardians with their challenging role.

> THE PURPOSE OF THE GMP IS TO SAFEGUARD INCAPACITATED INDIVIDUALS FROM POTENTIAL ABUSE, NEGLECT, AND EXPLOITATION BY COURT-APPOINTED GUARDIANS.

Judiciary staff as well as appointed and trained court volunteers review guardianship case information, including inventories and certain periodic reports submitted by guardians. The purpose of this review is to ensure that each guardian is handling the affairs of the incapacitated individual properly. The review is also intended to detect whether the protected person is subjected to abuse, neglect, financial exploitation or other problems. Cases in which such concerns are revealed are then referred to appropriate court leaders for additional review, as well as follow up as needed. This follow up may include a referral to a Superior Court, Chancery Division, Probate Part Judge when necessary.

It is important for guardians to know that certain periodic reports submitted to the court will be reviewed through the GMP. In accordance with their appointment, a guardian must cooperate with Probate Part judges, court staff and volunteers who may contact you for additional information or to provide direction regarding your guardianship matter.

For more information about the GMP, visit: NJCOURTS.GOV/GUARDIANSHIP.

[†] See Glossary of Terms

11. Payment for Service as Guardian of the Person

New Jersey law does not provide for compensation to a guardian of the person only.

- If you are also appointed as guardian of the estate, then statutory ***commissions***[†] are available.

- If you serve as guardian of the person only for an individual who does have assets and/or income (such as someone for whom there is a separate guardian of the estate), you may wish to apply to court for compensation for services that go beyond the scope of typical guardianship duties.

Approval for compensation should be addressed in the initial Judgment or via subsequent application to the court. Unless the court approves payment to you as guardian of the person, you are not entitled to take such payment from the guardianship estate.

NEW JERSEY LAW DOES NOT PROVIDE FOR COMPENSATION TO A GUARDIAN OF THE PERSON ONLY.

12. Action Required Upon Protected Person's Death

When the protected person dies, you must promptly notify the ***Surrogate's Court***[†] and forward a copy of the death certificate upon receipt. You should consult the Judgment to determine if you are required to notify anyone else within a specified period of time.

[†] See Glossary of Terms

FREQUENTLY ASKED QUESTIONS (FAQ)

Q: What is the difference between substituted judgment and best interest?

A: When using substituted judgment, a guardian makes a decision that the protected person would make if he or she had capacity, typically based on the preferences previously expressed by the individual. In contrast, a decision made based upon best interest requires the guardian to determine what he or she believes would be best for the incapacitated person, either without knowledge of the protected person's wishes or because doing what he or she wants would be unreasonably dangerous or impracticable.

Examples: (1) Consider the question of whether an elderly incapacitated person should continue to reside in her own home after falling several times, resulting in repeated injuries. If the protected person clearly expresses a desire to live at home, then a guardian *using substituted judgment* would honor this wish by bringing in home health aides or other assistance. (2) In *applying the best interest standard*, the guardian could decide to relocate the protected person to an independent living facility with on-site medical staff because remaining at home is unduly dangerous.

As illustrated by the above examples, a guardian should first attempt to apply substituted judgment, in order to achieve the known and reasonable preferences of the protected person. If the incapacitated person's wishes are unknown, or if fulfilling them would be dangerous or impractical, then the guardian should shift from substituted judgment to a best interest approach.

Q: When should the Report of Well-Being be filed?

A: You must consult the Judgment to determine when you are required to file a report as to the well-being of the incapacitated person. If ordered to report annually, the due date will be based on the anniversary of your Judgment date.

Most guardians of the person are required to report every twelve (12) months. However, the appointing judge may order a different reporting period. For example, the Judgment might only require a report of well-being every three (3) years. The Judgment will also indicate who should be served with a copy of the report.

Q: Does anything need to be attached to the Report of Well-Being?

A: The report of well-being requires an attached statement of the incapacitated person's condition and functional level. As guardian, you must obtain a written statement from a professional (physician, psychologist, clinician, etc.) who has evaluated the protected person within the reporting period. It is helpful to acquire a professional's statement well in advance of the due date for the well-being report.

Q: If a guardian is appointed for someone who previously executed an advance directive for healthcare, who makes medical decisions?

A: It is extremely important that you, as guardian, know whether you or another person has authority to make healthcare decisions. If the Judgment voids, or cancels, the designation of healthcare proxy, then you should be sure to provide short certificates (and possibly a copy of the Judgment) to any doctor or hospital that may have a copy of the now voided advance directive on file. Failure to do this may result in the hospital contacting a prior healthcare proxy rather than you as guardian.

If you know that another person has been appointed as healthcare proxy, then you should request that the Judgment specify whether the designation of healthcare proxy is voided. If the designation of healthcare proxy is not voided, then the Judgment should provide direction as to how you as guardian are to work with the healthcare proxy. For example, the Judgment may specify that although you are appointed as guardian of the person, you do not have authority over areas or decisions addressed by the advance directive.

It is extremely important to seek clarification from the court, as far in advance as possible, to avoid a situation in which it is unclear to a doctor or hospital who is authorized to make a medical decision for the incapacitated person.

GLOSSARY OF TERMS

Legal and non-legal language in the realm of guardianships is always changing. For reference, a glossary of terms is included in this guide. The terms defined in this glossary are marked with a dagger symbol (†) when they first occur in the text.

Advance Directive for Healthcare	A document setting forth an individual's wishes, specifically regarding medical and end-of-life decisions. An advance directive typically appoints someone, known as a healthcare proxy, to make decisions in the event that the person becomes unable to do so. Also known as a healthcare power of attorney or living will.
Best Interest Standard	Making a decision based on what you believe to be in the best interest of another person; for example, a guardian making a decision based upon what is believed to be in the best interest of an incapacitated person.
Commissions	Compensation, set by statute, to which an individual, such as a guardian of the estate of an incapacitated person, is entitled. A guardian of the person is not entitled to commissions.
County Surrogate	An elected Constitutional Officer who serves as judge of the Surrogate's Court for uncontested probate and estate matters. A Surrogate also serves as Deputy Clerk to the Superior Court for the Probate Part, as well as for adoptions in the Family Part.
General Guardianship	A "complete in every respect" type of guardianship in which the guardian is able to exercise all rights and powers of the incapacitated person in terms of the area of responsibility he or she is granted. Also known as full or plenary guardianship.

Guardian	An individual appointed by the court with authority over the person and/or the estate of a person who has been legally declared incapacitated. A guardian may have general or limited authority.
Guardian of the Estate	An individual appointed by the court to handle the financial affairs of another person who has been legally declared incapacitated. Unlike a guardian of the person, a guardian of the estate is not responsible for decisions regarding the personal well-being of the protected person. Rather, the guardian of the estate handles assets, income, expenses and liabilities.
Guardian of the Person	An individual appointed by the court to handle the personal affairs of another person who has been legally declared incapacitated. Unlike a guardian of the estate, a guardian of the person does not manage the financial affairs of the incapacitated person, except that a guardian of the person may serve as representative payee for Social Security benefits.
Guardianship Monitoring Program (GMP)	The New Jersey Judiciary Guardianship Monitoring Program is a statewide court program launched in January 2013 to monitor and support guardians in their handling of the affairs of incapacitated individuals. The program was implemented in all 21 counties as of July 2014.
Healthcare Proxy	An individual designated by an advance directive to make medical and end-of-life decisions for the principal (the person who executed the advance directive) if the principal becomes unable to do so.

Incapacity	Inability to govern oneself and/or to manage one's affairs. Incapacity may be general (as to all areas) or limited (as to specific areas only).
Incapacitated Person	An individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs. Also known as a protected person. Formerly referred to as an incompetent or a ward.
Informed Consent	An individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
Interested Parties	A person or agency that has an involvement with the incapacitated person who is the subject of the guardianship. Interested parties (or parties in interest) are typically the same individuals entitled to notice of the initial application for guardianship – i.e., the incapacitated person's spouse, parent, adult child, etc.
Judgment	The official decision of a court in a case. For purposes of this guide, Judgment refers to the Judgment of Incapacity and Guardian Appointment, also known as the Judgment of Incapacity and Order Appointing Guardian.
Least Restrictive Alternative	The most minimally restrictive form of intervention appropriate to address a situation, enabling the incapacitated person to maintain as much independence as possible without putting him or her in danger.
Letters of Guardianship	Documents issued by the County Surrogate upon an individual's qualification as guardian, after the entry of a Judgment by the Superior Court. Proof of a guardian's authority.

Limited Guardianship	A less intrusive, more individualized, type of guardianship in which a guardian is appointed with authority as to some – but not all – areas. A limited guardianship is established based upon a court's finding that the person alleged to be incapacitated lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself.
Protected Person	Another term for an incapacitated person, that is, an individual legally declared by the court as unable to govern himself or herself and/or unable to manage his or her affairs. Formerly referred to as an incompetent or a ward.
Qualification	A process conducted before the County Surrogate, or Surrogate's staff, following entry of a Judgment. As part of qualification, the person appointed as guardian affirms his or her willingness to fulfill the duties of a guardian.
Report of Guardian Cover Page	A general information form required to be filed along with any other guardianship reporting form(s). This form may be signed by all co-guardians of the person, or by all co-guardians of the estate. The Report of Guardian Cover Page is available at: HTTP://WWW.NJCOURTS.GOV/CIVIL/FORMS/11797_GRDNSHP_RPT_GRDN_COVER_PG.PDF.
Report of Well-Being	A form developed and approved for use by a guardian of the person required to report as to the well-being of the incapacitated person. The Report of Well-Being is available at: HTTP://WWW.NJCOURTS.GOV/CIVIL/FORMS/11798_GRDNSHP_RPT_WELL_BEING.PDF.

Service	Delivery of papers in a legally appropriate way. For example, notice of an application for appointment of a guardian is served upon the alleged incapacitated person by *personal service*, meaning that copies of the papers are personally delivered. For more information, see New Jersey Rules of Court (Rule 1:5) at: HTTP://WWW.NJCOURTS.GOV/RULES/INDEX.HTML
Short Certificates	Short forms of the Letters of Guardianship, stating that by Judgment of a particular date, the guardian was appointed with authority of the person and/or estate of the named incapacitated person. A short certificate will state that as of the date it was issued, the guardianship remains in effect. Additional short certificates may be purchased by a guardian, from the Surrogate, for $5.00 each as long as the guardianship remains in effect. Unlike the original Letters of Guardianship, short certificates should be provided to doctors, care facilities, and other institutions that require proof of a guardian's authority.
Substituted Judgment Standard	Making a decision based upon what you believe that the protected person would do if they had the capacity to make the decision.
Superior Court Judge	For purposes of guardianships, the judge of the Superior Court, Probate Part, who decides if the alleged incapacitated person is in fact incapacitated and in need of a guardian. The Superior Court judge makes the substantive decisions about the guardianship, including the determination of capacity and the choice of guardian. The Superior Court judge conducts any hearing(s) and signs the Judgment.
Surrogate's Court	A county office headed by the County Surrogate that may be in the same location as the Superior Court or may be in a different location. Probate Part actions are filed with the Surrogate's office, including actions to appoint a guardian. It is also where the guardian goes to qualify after entry of the Judgment.

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Stuart Rabner
Chief Justice

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Acting Administrative Director of the Courts

January 2017