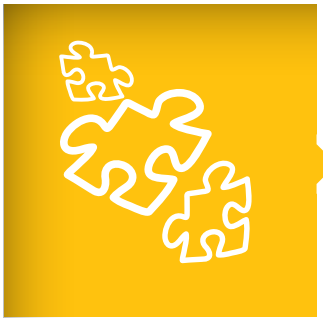

PRESUME guardianship is not needed.

REASON. Clearly identify the reasons for concern.



ASK if a triggering concern may be caused by temporary or reversible conditions.

PRACTICAL Tool for Lawyers:

Steps in Supporting Decision-Making

COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.



TEAM. Ask the person whether he or she already has developed a team to help make decisions.

IDENTIFY abilities. Identify areas of strengths and limitations in decision-making.

CHALLENGES. Screen for and address any potential challenges presented by the identified supports and supporters.

APPOINT legal supporter or surrogate consistent with person's values and preferences.

LIMIT any necessary guardianship petition and order.



Jointly produced by the
Commission on Law and Aging;
Commission on Disability Rights;
Section on Civil Rights and Social Justice; and
Section on Real Property, Trust and Estate Law

Defending Liberty
Pursuing Justice

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PRACTICAL Tool for Lawyers:
Steps in Supporting Decision-Making

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making. Learn more about the PRACTICAL Tool and Resource Guide at www.ambar.org/practicaltool.

PRESUME guardianship is not needed.

- ☐ Consider less restrictive options like financial or health care power of attorney, advance directive, trust, or supported decision-making
- ☐ Review state statute for requirements about considering such options

Observations and Notes:

REASON. Clearly identify the reasons for concern.

Consider whether the individual can meet some or all of the following needs:*

Money Management:
- ☐ Managing accounts, assets, and benefits
- ☐ Recognizing exploitation

Health Care:
- ☐ Making decisions about medical treatment
- ☐ Taking medications as needed
- ☐ Maintaining hygiene and diet
- ☐ Avoiding high-risk behaviors

Relationships:
- ☐ Behaving appropriately with friends, family, and workers
- ☐ Making safe decisions about sexual relationships

Community Living:
- ☐ Living independently
- ☐ Maintaining habitable conditions
- ☐ Accessing community resources

Personal Decision-Making:
- ☐ Understanding legal documents (contracts, lease, powers of attorney)
- ☐ Communicating wishes
- ☐ Understanding legal consequences of behavior

Employment:
- ☐ Looking for, gaining, and retaining employment

Personal Safety:
- ☐ Avoiding common dangers
- ☐ Recognizing and avoiding abuse
- ☐ Knowing what to do in an emergency

Observations and Notes (List supports needed.):

*Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," http://moguardianship.com.

ASK if a triggering concern may be caused by temporary or reversible conditions.

Look for steps to reverse the condition or postpone a decision until the condition improves.

Are concerns the result of or related to temporary or reversible conditions such as:

- ☐ **Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain
- ☐ **Sensory deficits:** hearing or vision loss
- ☐ **Medication** side effects
- ☐ **Psychological conditions:** stress, grief, depression, disorientation
- ☐ **Stereotypes or cultural barriers**

Observations and Notes:

COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

Ask "what would it take?" to enable the person to make the needed decision(s) or address the presenting concern.

Might any of the following supports meet the needs:

Community Supports:

- ☐ In-home care, adult day care, personal attendant, congregate and home delivered meals, transportation
- ☐ Care management, counseling, mediation
- ☐ Professional money management

Informal Supports from Family/Friends:

- ☐ Assistance with medical and money management
- ☐ Communication assistance
- ☐ Identifying potential abuse

Accommodations:

- ☐ Assistive technology
- ☐ Home modifications

Residential Setting:

- ☐ Supported housing or group home
- ☐ Senior residential building
- ☐ Assisted living or nursing home

Observations and Notes:

TEAM. Ask the person whether he or she already has developed a team to help make decisions.

- ☐ Does the person have friends, family members, or professionals available to help?
- ☐ Has the person appointed a surrogate to help make decisions?

Observations and Notes:

IDENTIFY abilities. Identify areas of strengths and limitations in decision-making if the person does not have an existing team and has difficulty with specific types of decisions.

Can the individual:

- ☐ Make decisions and explain his/her reasoning
- ☐ Maintain consistent decisions and primary values over time
- ☐ Understand the consequences of decisions

Observations and Notes:

CHALLENGES. Screen for and address any potential challenges presented by the identified supports and supporters.

Screen for any of the following challenges:

Possible challenges to identified supports:

- ☐ Eligibility, cost, timing or location
- ☐ Risk to public benefits

Possible concerns about supporters:

- ☐ Risk of undue influence
- ☐ Risk of abuse, neglect, exploitation (report suspected abuse to adult protective services)
- ☐ Lack of understanding of person's medical/mental health needs
- ☐ Lack of stability, or cognitive limitations of supporters
- ☐ Disputes with family members

Observations and Notes:

APPOINT legal supporter or surrogate consistent with person's values and preferences.

Could any of these appointments meet the needs:

- ☐ Agent under health care power of attorney or advance directive
- ☐ Health care surrogate under state law
- ☐ Agent under financial power of attorney
- ☐ Trustee
- ☐ Social Security representative payee
- ☐ VA fiduciary
- ☐ Supporter under representation agreement, legally or informally recognized

Observations and Notes:

LIMIT any necessary guardianship petition and order.

If a guardian is needed:

- ☐ Limit guardianship to what is absolutely necessary, such as:
  - Only specific property/financial decisions
  - Only property/finances
  - Only specific personal/health care decisions
  - Only personal/health care decisions
- ☐ State how guardian will engage and involve person in decision-making
- ☐ Develop proposed person-centered plan
- ☐ Reassess periodically for modification or restoration of rights

Observations and Notes:

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PRACTICAL Resource Guide

The **PRACTICAL Tool** for lawyers is a joint product of four American Bar Association entities—the Commission on Law and Aging; Commission on Disability Rights; Section on Real Property, Trust and Estate Law; and Section on Civil Rights and Social Justice, with assistance from the National Resource Center for Supported Decision-Making. These four ABA entities recognize the need to raise the awareness of lawyers about decision-making options for persons with disabilities that are less restrictive than guardianship.[1]

"PRACTICAL" is an acronym for nine steps for lawyers to identify these options. The lawyer can use the PRACTICAL checklist of steps during the client interview and immediately after to assist in case analysis. The steps blend in naturally with the case interview process. Lawyers serving in different roles may use the steps differently.

- A lawyer **representing a potential petitioner** for guardianship can go through the steps with the client to screen for other options, including creative ways to target concerns and prevent harm that could moot the need for guardianship.
- A lawyer **representing a respondent** in a guardianship proceeding can use the steps to contest the petition if the client wishes to do so. For example, the lawyer could ask for a continuance to address reversible conditions or put in place community supports that might make guardianship unnecessary. The lawyer could use the steps in preparing hearing arguments identifying the person's abilities and supports.
- A lawyer **serving as guardian ad litem** can use the steps in interviewing the person and preparing a report for the court.
- A lawyer **serving as guardian** can use the steps to enhance the self-determination of the individual and assess for possible modification of the order or restoration of rights.

Background

Lawyers increasingly encounter the need for decision-making by and on behalf of adults with disabilities—as an advisor to clients who are considering a guardianship petition; as counsel for petitioner or respondent or as a guardian ad litem in a guardianship proceeding; as guardian or conservator; when counseling clients on legal and financial planning; and when advising families on the transition of a minor with disabilities to adult status. With the aging of the population[2] and the increase in individuals with disabilities,[3] lawyers practicing in any area of the law increasingly may encounter issues of consent and capacity when clients need to execute contracts, transfer property or give informed consent for treatment.

[1] In this guide, the generic term "guardianship" refers to guardians of the person as well as guardians of the property, frequently called "conservators," unless otherwise specified.

[2] Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, *An Aging Nation: The Older Population in the United States* (May 2014), U.S. Department of Commerce, Economics and Statistics Administration, *available at* https://www.census.gov/prod/2014pubs/p25-1140.pdf.

[3] *Disability and Health*, World Health Organization Fact Sheet No 352 (December 2015), *available at* http://www.who.int/mediacentre/factsheets/fs352/en/.

Guardianship is one of society's most drastic interventions, protecting individuals yet infringing upon fundamental human rights and opportunities for self-determination. Many state statutes prioritize less restrictive legal options such as: for financial decisions, appropriate use of joint accounts, durable powers of attorney, trusts, and representative payment for public benefits; and for personal and health decisions, advance directives, living wills, and use of state default consent laws.

If a guardian is appointed, it should be as a last resort, and the order limited to only those areas in which the individual needs decision-making assistance. The importance of limited guardianship is a major theme of the Uniform Guardianship and Protective Proceedings Act (UGPPA).[4] Limited guardianship, participation of the individual in decision-making, and use of the person's values and preferences are key concepts in many state guardianship laws.

A recent shift in the decision-making landscape is the advent of "supported decision-making." The United Nations Convention on the Rights of Persons with Disabilities (CRPD),[5] adopted in 2006,[6] recognizes in Article 12 that persons with disabilities have the "legal capacity" and the right to make their own decisions, and that governments have the obligation to support them in doing so. For people with cognitive, intellectual, or psychosocial disabilities, Article 12 is critical to self-determination and equality. It calls for a switch in perception from a focus on disabilities to abilities, and from protection to support. Supported decision-making can be viewed as a key part of the "least restrictive alternative" spectrum; and has been called "a critically important alternative"[7] to the guardianship model. Also, supported decision-making precepts can guide guardians in maximizing the voice of individuals they serve.

Despite the strong mandates in statute and standards, use of the least restrictive alternative principle in practice appears uneven at best—and "supported decision-making" is still in the early stages of recognition. While statistics are scant, anecdotal evidence and numerous press accounts confirm that guardianship orders are frequently overly broad or perhaps unnecessary; and that guardians regularly are appointed when practical supports and/or a less drastic legal intervention would have sufficed.

The *PRACTICAL Tool* offers concrete steps to implement the least restrictive alternative principle as a routine practice of law. The *PRACTICAL Tool Resource Guide* describes each of the nine steps, offering examples and including hyperlinks to key materials and community resources.

[4] *Uniform Guardianship and Protective Proceedings Act (1997/1998)*, drafted by the National Conference of Commissioners on Uniform State Laws, *available at* http://www.uniformlaws.org/shared/docs/guardianship%20and%20protective%20proceedings/UGPPA_2011_Final%20Act_2014sep9.pdf.

[5] *United Nations Convention on the Rights of Persons with Disabilities*, *available at* http://www.un.org/disabilities/convention/conventionfull.shtml.

[6] Ratification of the CRPD currently is pending with the U.S. Senate.

[7] Leslie Salzman, *Guardianship for Persons with Mental Illness—A Legal and Appropriate Alternative?*, Saint Louis University Journal of Health Law & Policy (Vol. 4, No. 271), *available at* http://supporteddecisionmaking.org/sites/default/files/guardianship_for_persons_with_mi.pdf.

PRESUME guardianship is not needed. Notably, such a presumption is typically required by state statutes allowing guardianship only where a person's needs cannot be met by less restrictive means.

Guardianship historically has been a protective device, rooted in the ancient concept of *parens patriae,* in which the state must care for people who cannot care for themselves. In guardianship, an individual's powers, rights, and authority are transferred from the person to a surrogate in the name of protection from harm—a process that has been said to "unperson"[8] an individual.

When a client presents a situation in which someone seems at risk and unable to protect him or herself, a natural and well-meaning impulse, compounded by collective legal practice over many years, may be for the lawyer to begin to draw up a requested guardianship petition to prevent harm and maximize safety.

In the PRACTICAL approach, the lawyer *stops*—and uses as a starting point that there may be other practical and legal options that can address needs and challenges at hand. Best practice requires that the lawyer thoroughly examine these options *before* proceeding with the guardianship petition.

In effect, the PRACTICAL approach confirms and operationalizes the presumption that guardianship is not the answer, yet retains it in the most limited form as a last resort option if needed. Consider the following rationales:

Statutory Mandate

The "least restrictive alternative"[9] principle was first established by the U.S. Supreme Court in 1960, limiting state intervention in individual rights and liberties to only what is necessary for the health and welfare of individuals. This principle has been statutorily applied to the state's intervention in the form of guardianship proceedings. The Uniform Guardianship and Protective Proceedings Act requires a court visitor report to specify "whether less restrictive means of intervention are available." Most state guardianship laws similarly emphasize exploration of less restrictive decisional options before the filing for, and appointment of, a guardian. Finding less restrictive options is not only good practice; it is generally a state statutory mandate. Check requirements for your state.[10]

[8] Fred Bayles and Scott McCartny, Guardians of the Elderly: An Ailing System Part I: Declared 'Legally Dead' by a Troubled System, Associated Press (Sep. 19, 1987), *available at* http://www.apnewsarchive.com/1987/Guardians-of-the-Elderly-An-Ailing-System-Part-I-Declared-Legally-Dead-by-a-Troubled-System/id-1198f64bb05d9c1ec690035983c02f9f.

[9] Shelton v. Tucker, 364 U.S. 479 (1960), *available at* https://www.law.cornell.edu/supremecourt/text/364/479.

[10] Adult Guardianship Statutory Table of Authorities, American Bar Association Commission on Law and Aging, *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_AdultGuardianshipStatutoryTableofAuthorities.authcheckdam.pdf.

Moreover, a compelling argument can be made that unnecessary guardianship without the examination of workable alternatives violates the 1999 Supreme Court decision in the *Olmstead* decision[11] requiring community integration, in that it unnecessarily isolates and segregates individuals in efforts to protect them.

Practice Standards

The *National Probate Court Standards*[12] require that a guardianship petition include "representations that less intrusive alternatives to guardianship or conservatorship have been examined" (3.3.1); provide that a court "should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings" (3.3.2); and specify that a court visitor report should state "whether less intrusive alternatives are available" (3.3.4 commentary).

The 2013 *National Guardianship Association Standards of Practice*[13] require that guardians provide a person "with every opportunity to exercise those individual rights that the person might be capable of exercising" (Std 9); "carefully evaluate alternatives that are available" (Std 8); and "identify and advocate for the person's goals, needs, and preferences" (Std 7).

Ethical Standards

ABA Model Rules of Professional Conduct 1.14[14] instructs attorneys to recognize client self-determination, less restrictive alternatives, and the need for supports. If the lawyer suspects a client has "diminished capacity"[15] that may inhibit the client's ability to make decisions regarding the attorney's representation, the lawyer must seek to maintain a "normal client-lawyer relationship." The Comment notes that this is based on the assumption that the client, "*when properly advised and assisted*, is capable of making decisions about important matters" (emphasis added). If the attorney believes that the client is at risk of substantial harm, the attorney may take "protective action," including seeking out and consulting with the client's support network or assisting the client in executing a power of attorney or another form of legal support.

In taking protective action, the lawyer should be guided by the person's "wishes and values" to the extent known, with the goal of "intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities. . ." Further, in considering "appointment of a legal representative" the lawyer should "be aware of any law that requires the lawyer to advocate

[11] *Olmstead v. L.C.*, 527 U.S. 581 (1999), *available at* https://www.law.cornell.edu/supct/html/98-536.ZO.html.

[12] *National Probate Court Standards*, National Center for State Courts, *available at* http://ncsc.contentdm.oclc.org/cdm/ref/collection/spcts/id/240.

[13] National Guardianship Association Standards of Practice, National Guardianship Association, *available at* http://www.guardianship.org/documents/Standards_of_Practice.pdf.

[14] *Rule 1.14: Client with Diminished Capacity, Model Rules of Professional Conduct*, American Bar Association, *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity.html.

[15] The Model Rules of Professional Conduct use the phrase "diminished capacity," and many state guardianship laws use the phrase "incapacitated person" or similar language based on capacity. Because the Convention on the Rights of Persons with Disabilities provides that individuals with disabilities have legal capacity and must be given decision support, this guide avoids these phrases.

the *least restrictive action* on behalf of the client." Most state ethics opinions also instruct the attorney to identify any less restrictive alternatives.

Mental Health and Quality of Life

Encouraging individuals to retain as much autonomy as possible and be "causal agents"[16] in their lives is consistent with gerontological findings[17] that maintaining opportunity for choice and control is an important component of mental health; and that loss of ability—or perceived ability—to control events can lead to or exacerbate physical or emotional illness. Complete loss of status as an adult member of society could in effect act as a self-fulfilling prophecy, intensifying any disability an older person may have. Similar findings show that younger adults[18] with higher levels of self-determination have a more positive quality of life.

Expense and Delay

Identifying supportive arrangements that are less restrictive than guardianship can avoid expenses of legal and court fees, and the delays of court action.

REASON. Clearly identify the reasons for concern. Which of the individual's needs are not met?

State the specific triggering concern(s) in your own words (e.g., the person is being financially exploited; the person needs medical treatment requiring informed consent). Be as specific as possible. Use the following checklist of domains of functional needs[19] (adapted from Missouri's tool on alternatives to guardianship[20]) as a starting point. For each, consider whether the person can meet some or all of the needs:

Money Management

- Managing accounts, assets and benefits—including daily expenditures, paying bills, making change, and using a bank account

[16] Wehmeyer, et al., *Promoting Causal Agency: The Self-Determined Learning Model of Instruction*, Exceptional Children (Vol. 66, No. 4, pp. 439-453), The Council for Exceptional Children, *available at* http://supporteddecisionmaking.org/sites/default/files/promoting_causal_agency_self-determined_learning_model_instruction.pdf.

[17] Mallers, et al., *Perceived Control in the Lives of Older Adults: The Influence of Langer and Rodin's Work on Gerontological Theory, Policy, and Practice*, The Gerontologist (Vol. 54, No. 1), *available at* http://gerontologist.oxfordjournals.org/content/54/1/67.full.pdf+html.

[18] Heller, et al., *Self-Determination Across the Life Span: Issues and Gaps*, National Gateway to Self Determination (2011), *available at* http://ngsd.org/news/self-determination-across-life-span-issues-and-gaps.

[19] *MO Guardianship: Understanding Your Options & Alternatives*, at http://moguardianship.com/#materials, sponsored, revised and updated by Jane St. John & Rachel Hiles, Missouri Family to Family, UMKC-Institute for Human Development, sponsored by Missouri Planning Council for Developmental Disabilities, developed and produced by UMKC Institute for Human Development, in collaboration with the Missouri Protection and Advocacy Services & the Missouri Department of Mental Health, Appendix 3 (2013).

[20] *MO Guardianship: Understanding Your Options and Alternatives*, Institute for Human Development (Sep. 2013), *available at* http://moguardianship.com/MO%20Guardianship%20RESOURCE%20GUIDE%20rev%20Sept%20%202013.pdf.

- Recognizing exploitation

Health Care

- Making decisions about medical treatment
- Taking medications as needed
- Maintaining hygiene, dental care and diet
- Avoiding high-risk behaviors (such as substance abuse, overeating, high-risk sexual activities, wandering)

Relationships

- Behaving appropriately with different kinds of relationship partners: family, friends, co-workers, intimate partners
- Making safe decisions concerning marriage and sexual relationships

Community Living

- Living independently without risk of serious harm or injury
- Maintaining habitable conditions at home (cleanliness, maintenance, security)
- Accessing community resources (transportation, bank, stores, post office, restaurants, home repair, emergency services)

Personal Decision-Making

- Understanding and communicating consent concerning legal documents (contracts, lease, deed, power of attorney)
- Identifying someone to represent interests and support with decision-making
- Communicating wishes, including specific desire to participate in the voting process
- Understanding legal consequences of behavior

Employment

- Looking for, gaining, and retaining employment

Personal Safety

- Avoiding common dangers (traffic, problems in driving, sharp objects, hot stove, poisonous substances)
- Recognizing and avoiding abuse
- Knowing what to do in an emergency

ASK if a triggering concern may be caused by *temporary or reversible* conditions. Look for steps to reverse the condition and postpone a decision until the condition improves.

Use the following list to systematically screen for conditions or environmental factors affecting decision-making ability that could be mitigated or reversed, mooting the need for a guardianship, or at least delaying the decision to seek guardianship.

Acute Temporary Medical Conditions

- Urinary tract infections:[21] UTIs often can cause confusion in older people.
- Delirium[22] (acute temporary disorientation): in older people often triggered by medical illness or post-operative stress.
- Dehydration,[23] malnutrition:[24] Inadequate nutrition, hydration, and vitamin deficiencies can lead to reversible cognitive changes.
- Traumatic brain injury:[25] may affect cognitive, social, physical, and psychological functioning but has a significant recovery rate.
- Oral health:[26] poor oral health has been linked to poor self-esteem, lack of nutrition, and diminished cognitive functioning.

[21] *Urinary tract infections (UTIs) and dementia*, Alzheimer's Society, *available at* http://www.alzheimers.org.uk/site/scripts/documents_info.php?documentID=1777.

[22] *When Patients Suddenly Become Confused*, Harvard Women's Health Watch (May 2011), *available at* http://www.health.harvard.edu/staying-healthy/when-patients-suddenly-become-confused.

[23] David Benton, *Dehydration Influences Mood and Cognition: A Plausible Hypothesis?*, National Institutes of Health (May 2011), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3257694/.

[24] M. Hickson, *Malnutrition and ageing*, National Institutes of Health (Jan. 2006), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563720/.

[25] *Basic Information about Traumatic Brain Injury and Concussion*, Center for Disease Control and Prevention, *available at* http://www.cdc.gov/traumaticbraininjury/basics.html.

[26] Alan Mozes, *Could Poor Dental Health Signal a Faltering Mind?*, HealthDay (Dec. 2013), *available at* http://consumer.healthday.com/senior-citizen-information-31/misc-aging-news-10/could-poor-dental-health-signal-a-faltering-mind-682728.html.

Sensory Deficits

- Hearing loss:[27] may be isolating and may be perceived as dementia or diminished understanding.
- Vision loss:[28] can be disorienting but is easily correctable.

Medication Effects; Polypharmacy

Prescription and over-the-counter medication, while potentially improving health, may affect mental status[29]—especially if multiple drugs are taken simultaneously,[30] as is common for older persons, producing drug-to-drug interactions. In addition to the fact that older people take many drugs, as the body ages it may be less able to cope with certain drugs and drug interactions.[31] Careful review[32] of medications could identify changes that significantly improve mental functioning.

Pain

Chronic or acute pain can be associated with cognitive impairment.[33] Effective pain reduction or management could enhance mental status.

Emotional Conditions

- Depression:[34] Ongoing depression can impair judgment and cause fatigue.
- Stress; grief:[35] Grief and stress due to loss of a loved one are particularly common to older persons. Health problems or loss of employment can cause stress.

[27] Jeremy Shere, *Can Hearing Loss Predict—or Lead to—Cognitive Decline?*, The Dana Foundation (Aug. 2014), *available at* http://www.dana.org/News/Can_Hearing_Loss_Predict%E2%80%94or_Lead_to%E2%80%94Cognitive_Decline_/.

[28] Allen L. Pelletier and Jeremy Thomas, *Vision Loss in Older Persons*, American Family Physician (Jun. 2009), *available at* http://www.aafp.org/afp/2009/0601/p963.html.

[29] *Prescription Medication in the Elderly*, Net Wellness Consumer Health Information, *available at* http://www.netwellness.org/healthtopics/aging/faq16.cfm.

[30] Roni Caryn Rabin, *Cocktail of Popular Drugs May Cloud Brain*, Well Blog (Feb. 2012), The New York Times, *available at* http://well.blogs.nytimes.com/2012/02/27/cocktail-of-popular-drugs-may-cloud-brain/?_r=0.

[31] *Medications & Older Adults*, Health in Aging Foundation (Oct. 2015), *available at* http://www.healthinaging.org/medications-older-adults/.

[32] *Avoiding Overmedication and Harmful Drug Reactions*, Health in Aging Foundation (Sep. 2015), *available at* http://www.healthinaging.org/files/documents/tipsheets/Tip.Avoiding_OverMedication.pdf.

[33] John Gever, *Chronic Pain Disrupts Resting Brain Dynamics*, MedPage Today (Feb. 2008), *available at* http://www.medpagetoday.com/PainManagement/PainManagement/8225.

[34] *Depression*, Mayo Foundation for Medical Education and Research (July 2015), *available at* http://www.mayoclinic.org/diseases-conditions/depression/basics/symptoms/con-20032977.

[35] Cell Press, *How repeated stress impairs memory*, ScienceDaily (Mar. 2012), *available at* http://www.sciencedaily.com/releases/2012/03/120307132202.htm.

- Transfer trauma:[36] This is stress and confusion caused by a sudden and perhaps forced move, usually by a person with dementia, as from hospital to nursing home and perhaps back, or from home to assisted living or nursing home.

Age and Disability Discrimination

The trigger for a guardianship petition may well lie not in the person's abilities but the attitudes of others. Social workers, protective services, lawyers, and judges are not immune from the deeply entrenched societal belief that individuals with disabilities and older adults cannot live independently or make their own decisions.

- Age & disability discrimination; stereotyping.[37] Myths and stereotypes about aging[38] and disability[39] can cause skepticism about decision-making abilities, resulting in unnecessary guardianship. "Ageism" is systematic stereotyping and discriminating against individuals or groups on the basis of their age. It is important for lawyers to examine and confront *their own perceptions* and biases[40] to minimize unnecessary intrusive actions.
- Cultural barriers.[41] Cultural variations and language differences may be a barrier to understanding a person's behaviors, but can be addressed by awareness and techniques for cultural competency, and sometimes by translation services.

Family Disputes

The trigger for a guardianship petition may lie in family disputes over care and control of finances, with long-standing sibling feuds re-emerging. In aggravated situations, one sibling may prevent visitation by another, isolating and perhaps neglecting the elder, or misusing powers of attorney. There are many reasons why families may fight[42] over the care or support for the person, often leaving out the voice of the person him or herself. Family conflict may be addressed by mediation—especially by mediators skilled in elder care or guardianship cases.

[36] Kate Jackson, *Prevent Elder Transfer Trauma: Tips to Ease Relocation Stress*, Social Work Today (Vol. 15, No. 1), *available at* http://www.socialworktoday.com/archive/011915p10.shtml.

[37] *Are you ready? What you need to know about ageing*, World Health Day Toolkit, World Health Organization, *available at* http://www.who.int/world-health-day/2012/toolkit/background/en/index3.html.

[38] Melissa Dittmann, *Fighting ageism*, Monitor (May 2003), American Psychological Association, *available at* http://www.apa.org/monitor/may03/fighting.aspx.

[39] *About Independent Living*, National Council on Independent Living, *available at* http://www.ncil.org/about/aboutil/.

[40] *Understanding the Four C's of Elder Law Ethics*, American Bar Association Commission Law and Aging, *available at* http://www.americanbar.org/groups/law_aging/resources/ethics_and_counseling_older_clients.html.

[41] Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, UCLA Law Review Discourse (Vol. 62, 2014), *available at* http://www.uclalawreview.org/cultural-competency-training-preparing-law-students-for-practice-in-our-multicultural-world-2/.

[42] Jeff Anderson, *10 Reasons Families Fight about Senior Care*, Senior Living Blog (Mar. 2014), A Place for Mom, *available at* http://www.aplaceformom.com/blog/reasons-families-fight-about-senior-care-02-27-2012/.

COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources, and making accommodations in place.

At the heart of the PRACTICAL approach are practical actions that can be taken, connections that can be made, and creative accommodations that can be made to enhance decision-making ability. The PRACTICAL steps bring these essential non-legal solutions to the heart of the process. Rather than asking whether the person can make the decisions at hand, ask whether the person can make them with support.

Poor and inadequate social services and poor quality residential care can lead to a dire living situation, which may be the crux of the problem. A fix in social services or living arrangements may moot the need for a guardianship petition.

Community Supports

Lawyers can call on multiple networks of supportive community services for individuals with disabilities and older adults.

- **Human Services.** Most local jurisdictions have human services divisions, often with customer care or intake lines to help match the services to the needs. Some communities have an extensive set of supportive services for older persons and individuals with disabilities, while others have only the rudiments. Local resources may serve as an information or access point for state resources such as Medicaid. Find out about mental health resources, subsidized housing and rental assistance, assistive technology, home modification, supportive memory aids, training and education, and recreation/socialization opportunities that could support the person.
- **Legal Services.** Consider calling on the expertise of legal services,[43] especially those funded to help older people under the Older Americans Act, to access public benefits for low and moderate income individuals. Protection and Advocacy Programs (P&As)[44] in every state have the authority to provide legal representation and advocacy for individuals with disabilities. P&As represent individuals with disabilities on a wide variety of matters including employment and housing discrimination, as well as abuse and neglect.
- **Agencies on Aging.** Under the Older Americans Act[45] there is an established network of state and area agencies on aging either providing or contracting for key community-based aging services such as congregate or home delivered meals, senior centers, adult day health, care management, money management, transportation, in-home care, and assistance

[43] *Find Legal Aid*, Legal Services Corporation, *available at* http://www.lsc.gov/find-legal-aid.

[44] *P&A/CAP Network*, National Disability Rights Network, *available at* http://www.ndrn.org/about/paacap-network.html.

[45] Administration on Aging (AoA) Older Americans Act, Administration for Community Living, *available at* http://www.aoa.gov/AoA_programs/OAA/.

with Medicare problems. To find resources in your area quickly, use the national Eldercare Locator.[46]

- **ADRCs.** The U.S. Administration on Community Living, with the Centers for Medicare & Medicaid Services (CMS) and the Veterans Health Administration has developed a "No Wrong Door" system of Aging and Disability Resource Centers (ADRC).[47] These centers streamline access to long-term services and support options and aim to simplify access.
- **Independent Living Services.** There is also a system of Independent Living Services—programs established under the Rehabilitation Act, currently based at the Administration for Community Living[48] in the U.S. Department of Health and Human Services. The independent living programs seek to maximize the independence, well-being, and health of people with disabilities across the lifespan.
- **Ombudsman Programs.** Each state and many localities have long-term care ombudsman programs.[49] Ombudsmen serve as advocates for residents in nursing homes, assisted living, and other residential settings. An ombudsman may be able to craft a resolution to problems in care or residents' rights that will meet the perceived need for a guardian.
- **Developmental Disability (DD) Councils.** State Developmental Disability Councils[50] receive federal funding to promote self-determination, inclusion, and integration for individuals with developmental disabilities.
- **Mediation.** There may be mediators in the community specially trained in elder or guardianship mediation. While there is no specific list of such mediators, contact your state mediation association or your area agency on aging. To be sure the mediator has the relevant experience and skills, review the Association for Conflict Resolution's (ACR) Training Objectives for Eldercare Mediation.[51] In especially high conflict cases, find out if your court is piloting an "eldercaring coordination"[52] program according to ACR guidelines.

[46] Eldercare Locator *available at* http://www.eldercare.gov/Eldercare.NET/Public/Index.aspx.

[47] *Aging & Disability Resource Centers Program/No Wrong Door System*, Center for Integrated Programs (CIP), Office of Consumer Access and Self Determination, *available at* http://www.acl.gov/Programs/CIP/OCASD/ADRC/index.aspx.

[48] Administration for Community Living website *available at* http://www.acl.gov/.

[49] National Consumer Voice for Quality Long-Term Care website *available at* http://ltcombudsman.org/.

[50] National Association of Councils on Developmental Disabilities website *available at* http://www.nacdd.org/home/.

[51] *Elder Care and Elder Family Decision-Making Mediation: Training Objectives and Commentary*, ACR Section on Elder Decision-Making and Conflict Resolution Committee on Training Standards, *available at* http://acreldersection.weebly.com/uploads/3/0/1/0/30102619/eldercareobjectives_7_30_2012.pdf.

[52] *Guidelines for Eldercaring Coordination*, Association for Conflict Resolution Task Force on Eldercaring Coordination (2014), *available at* http://www.eldersandcourts.org/~/media/Microsites/Files/cec/ACR%20Guidelines%20for%20Elder%20Caring%20Coordination%202014.ashx.

Informal Supports

Family caregivers[53] provide the bulk of long-term care in the U.S.

- Have all family members who could provide support been identified? Sometimes it takes a comprehensive search, and is worth digging.
- Is there a network of supportive friends able and ready to work with the individual on decisions in line with his or her values and preferences? Check for close friends over many years, neighbors, co-workers, providers who have become familiar with the person, volunteers, and members of faith-based communities.

Accommodations and Communication Techniques

> *It is the person's will and preference, plus support plus accommodations that equals legal capacity.*[54]

Finding the right combination of supports and accommodations can boost understanding and decision-making ability, and may alleviate the need for a guardianship. Start with the challenge at hand and ask "*what would it take*" to enable this person to make the needed decisions in a supportive environment.

There may be accommodations as required under the Americans with Disabilities Act (ADA) that can boost the person's functioning. But beyond the ADA there is a host of creative possibilities. While some involve funding, others are low-cost or no-cost, limited only by imagination. For example, an individual with an intellectual disability wanted to donate a kidney to his brother, but there were legal questions about his capacity to consent. Accommodations to aid understanding for such a person might include the use of drawings, a conversation with someone who has donated a kidney, a visit to the hospital, and communicating in plain language in a comfortable environment.[55]

There are many communication techniques[56] that can markedly enhance understanding and response:

- Break information down into more manageable segments.
- Pay special attention to developing trust and confidence.
- Use paraphrasing and active listening.
- Don't make important points in passing, rephrase them.
- Use plain language, short sentences, active voice.
- Speak directly to the person, not "past" the person.
- Use hands and facial expressions to emphasize what you say.

[53] *Caregiving*, Family Caregiver Alliance (2009), *available at* https://caregiver.org/caregiving.

[54] Michael Bach, *A Disability-Inclusive Approach to the Right to Decide*, Developmental Disabilities Lecture Series (2013), *available at* http://rwjms.rutgers.edu/boggscenter/documents/Bach5-3-13packet.pdf.

[55] Kristin Booth Glen, *Supported Decision-Making and the Human Right of Legal Capacity*, Inclusion (Vol. 3, No. 1, 2015).

[56] *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*, American Bar Association Commission on Law and Aging and American Psychological Association (2005), *available at* https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf.

TEAM. Ask the person whether he or she already has developed a "team" to help make decisions.

Ask if there are any people or entities already assisting the person in making decisions—and if the person wants such help. It is important the person is able to identify any supporters.

Network of Supporters

The person over time may have developed an informal system for making decisions with the help of a network of trusted supporters such as friends, relatives, colleagues, acquaintances from the community, supportive staff, or co-workers.

The person may have created—or may want to create—a structured "circle of support"[57] that includes trusted supporters who regularly meet as a group for planning, problem-solving, and decision-making. The circle members help the person with managing and budgeting goals, evaluating risks and consequences, and recognizing and making full use of abilities.

Appointed Surrogate

Guardianship may not be necessary if the person already has appointed a trusted surrogate authorized under state law to make decisions on his or her behalf, ideally with his or her participation.

- Is there already an appointed surrogate?
- Does the surrogate have authority to act in the situation at hand?
- Is the surrogate trustworthy?
- Will the surrogate act in accordance with the person's values and preferences, and with the person's involvement?

Legally authorized surrogates[58] could include:

- An agent under a financial power of attorney.
- A trustee under a revocable living trust.
- An agent under a health care power of attorney or advance directive.
- A family member or other person authorized to make health care decisions under a state default surrogate consent law.
- A representative payee for Social Security or other public benefits, or a VA fiduciary.
- While not a "surrogate," a supporter under a legally or informally recognized representation agreement can help the person make decisions.

[57] *NYS Self-Determination Consolidated Supports & Services Project*, Circle of Support (COS) Training, *available at* http://www3.opwdd.ny.gov/wp/images/cos_master_01_12.pdf.

[58] See more information about legally authorized surrogates in the later section of this guide under "APPOINT."

IDENTIFY abilities. If the person does not already have an existing team and has difficulty with specific types of decisions, identify areas of strengths and limitations in decision-making.

Determine whether:

- The person is able to make the specific decision(s) with support from a trusted friend, family member or someone else.
- The person is able to name one or more supporters to help in decision-making; or appoint a surrogate to make the decision(s) in question.

Without a system of decision-making support in place, there is a need to clearly assess the individual's abilities—both strengths and limitations—in the specific areas in which decisions are needed; as well as the ability to name a supporter or appoint a surrogate.

Sometimes this may be an informal assessment by the lawyer and others involved in the case about what the person is able to do and what support is necessary. The American Bar Association and the American Psychological Association have developed a Handbook for Lawyers[59] detailing the elements of such assessments for older clients, with a framework of factors including statutory provisions and ethical rules. Consider whether the person can:

- Articulate reasoning leading to a decision.
- Maintain consistent decisions and primary values over time;
- Appreciate consequences of decisions.

As explained in the *Handbook,* it is generally not appropriate for a lawyer to use formal clinical instruments such as the Mini-Mental Status Examination (MMSE). Lawyers are not trained to administer these tests or interpret the results. The test questions (such as clock drawing or counting backwards) have little direct bearing on understanding of the tasks or decisions at hand. Even for clinical professionals, the MMSE is simply a screening tool to determine whether further evaluation is needed, not an assessment tool itself.

In some cases, a lawyer may find that consultation with a *clinical specialist* would be helpful.

- The lawyer could **consult informally** with a clinician such as a geriatrician, geriatric psychiatrist, psychologist, neurologist or other mental health professional with experience in assessments.
- Or the lawyer could **seek a formal clinical assessment** with the individual's consent. Such an assessment can be a good tool in planning for needed supports, determining whether the person has the ability to either make certain decisions or to appoint a legal representative to

[59] *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*, American Bar Association Commission on Law and Aging and American Psychological Association (2005), *available at* http://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf.

assist. If there is a decision to file for limited guardianship, an assessment can help to clarify the specific powers that would be retained, making for a much more tailored court order.

- In seeking a formal assessment, be specific with the clinician about the reason for the referral, and the person's circumstances, history and values. Ask for opinions on supports in any areas of deficit, and approaches less restrictive than guardianship.

CHALLENGES. Screen for and address any potential challenges presented by the identified supports and supporters.

Once a support system or individual supporters are identified, the biggest challenge is making sure the situation remains viable and the supporters are trustworthy.

Challenges with Support Systems

- Are there challenges in accessing community or other support systems? Are there barriers in eligibility, cost, timing or location?
- Is an institutional support system—such as a community-based mental health agency or a homeless outreach organization—underfunded, overburdened with paperwork and bureaucratic delay?
- Does the individual receive public benefits that are at risk if not vigilantly protected?
- Are there certain prerequisites that the individual must establish in order to access the support systems?

Challenges with Supporters

- Do the identified supporters present any risk of substantial physical, emotional, or financial harm?
- Do you have any suspicion that the supporters may engage in abuse, neglect, exploitation or undue influence? Be sure to report any suspected abuse to Adult Protective Services.[60]
- Do the supporters understand the individual's potentially complex medical and/or mental health needs?
- Are the supporters stable? Do they need an incentive to remain so?

Coercion; Undue Influence

It is important to consider whether concerns triggering a possible guardianship petition may be rooted in coercion, fraud, intimidation, or undue influence. Guardianship may be perceived as a key strategy in protecting an individual from the perpetrator. However, making a report to adult protective services and removing the cause of the undue influence—admittedly often not an

[60] National Adult Protective Services Association website *available at* http://www.napsa-now.org/.

easy task—may reduce the impetus for guardianship. Often the person will not recognize what is happening and will side with the perpetrator.

Undue influence[61] has been defined as instances in which "people use their role and power to exploit the trust, dependency, and fear of others. They use this power to deceptively gain control over the decision-making of the second person" (psychologist Margaret Singer). Legal definitions[62] vary, but often include factors relating to: (1) the relationship between the alleged influencer and the alleged victim; (2) the alleged victim's vulnerability to undue influence; (3) the alleged influencer's opportunity to gain control; and (4) whether the alleged victim's decisions were the outcome of the undue influence. Other definitions focus on the nature of the transaction(s) at hand, the mental condition of the individual, and the relationship of the parties. Be alert to the possibility that a supporter might potentially unduly influence the person in the guise of support.

Note that being subject to undue influence does not necessarily mean a person has "diminished capacity" as defined under state guardianship laws. Be careful to separate the external coercion from the individual's abilities.

APPOINT. If the person is able and wishes to select a trusted supporter to help make decisions and/or to appoint a legal surrogate, help the person do so in a way that is consistent with the person's values and preferences.

Consider the following options for clarifying or implementing a supporter relationship in a legally recognizable form that may help ensure the person's wishes are honored. The National Guardianship Network has a full list of options[63] for decision-making that are less restrictive than guardianship.

Health Care Advance Directive

The person may be able to name someone as an agent to make health care decisions in a written advance directive document,[64] which also could include statements of the person's wishes concerning medical treatment. The real challenge will be ensuring that the person effectively

[61] Lisa Nerenberg, *Undue Influence: An Insidious Form of Elder Abuse*, NYC Elder Abuse Center website (2013), *available at* http://nyceac.com/undue-influence-an-insidious-form-of-elder-abuse/.

[62] Lori A. Stiegel, *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement*, Bureau of Justice Assistance (2014), *available at* https://www.bja.gov/Publications/ABA-ElderAbuseGuide.pdf.

[63] *Decision Making Without Guardianship*, National Guardianship Network, *available at* http://www.naela.org/NGN/About_Guardianship/Decision_Making_Without_Guardianship/NGN/About_GuardianshipMain/Decision_Making.aspx?hkey=eb9c2ced-35aa-4499-acd1-26cd208f02ac.

[64] *Living Wills, Health Care Proxies, & Advance Health Care Directives*, American Bar Association Section of Real Property, Trust and Estate Law, *available at* http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/living_wills_health_care_proxies_advance_health_care_directives.html.

communicates his or her values and wishes to the agent. Check your state's laws[65] for any specific requirements. Some state laws[66] also direct a guardian to comply with a health care advance directive if possible.

A health care agent may consent to or participate in discussion concerning two other kinds of advance care planning documents—a Do Not Resuscitate (DNR) Order[67] directing a physician not to perform cardio-pulmonary resuscitation if an individual's breathing or heart stops; and in some states a Physician's Orders for Life-Sustaining Treatment (POLST)[68] in which a seriously ill patient can indicate and document his or her desired end of life care, which is translated into a physician's order.

Health Care Surrogate Under State Law

In the Uniform Health Care Decisions Act and statutes in 44 states,[69] if the person is not able to make health care decisions him or herself, the authority to make some or all health care decisions automatically devolves to a surrogate generally designated according to a hierarchy of family members. In over 20 of these states, a "close friend" familiar with the person's history and values can make decisions if there is no family, and in approximately 12 states some combination of physicians and ethics committee can decide if there is no one else. It is important to consider whether these legally authorized health care surrogates actually know or try to find out what the person wants or would have wanted and support the person in those choices. A surrogate could be a member of a support team assisting the person—or may be the only one on which the clinicians rely.

Financial Power of Attorney

The person may be able to execute a financial power of attorney,[70] a legal document assigning authority to make financial decisions to another party. Unlike the healthcare advance directive, a financial power of attorney can be effective while an individual has capacity. Or, it can become effective only if the individual loses capacity. It is helpful to delegate specific categories of authority, such as managing pensions, control over a checking account, or accountability for a lease.

[65] *Links to State-Specific Advance Directive Forms*, American Bar Association Commission on Law and Aging, *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/Links_to_State_Advance_Directive_Forms.authcheckdam.pdf.

[66] *Guardianship Law & Practice Resource Website*, American Bar Association Commission on Law and Aging, *available at* http://ambar.org/guardianship.

[67] *Do-not-resuscitate order*, MedlinePlus, U.S. National Library of Medicine, *available at* http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000473.htm.

[68] The National POLST website is available at http://www.polst.org/.

[69] *Default Surrogate Consent Statutes*, American Bar Association Commission on Law and Aging (July 2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_default_surrogate_consent_statutes.pdf.

[70] *Power of Attorney*, American Bar Association Section of Real Property, Trust and Estate Law, *available at* http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/power_of_attorney.html.

Trustee

For complex or substantial assets, the person may be able to execute a document transferring title and authority to manage property to a trustee[71] for the benefit of either the person or others as beneficiaries, under a revocable living trust.

Representative Payee

The Social Security Administration administers a representative payment program[72] for recipients of Social Security and SSI who it deems "incapable" of managing their own funds. The representative payee receives and manages the payment, using it to pay for current and foreseeable needs such as rent, food and spending money. An individual can apply to Social Security to become a payee for a recipient, or designated organizations can serve as payees for many recipients. The representative payee has authority only over the benefits and cannot make any other decisions on the person's behalf. It is very difficult for an individual to revoke a payee's status once appointed.

The Veterans Administration can appoint a VA Fiduciary[73] upon a determination that a VA beneficiary is unable to manage his or her VA benefits. Generally, family members or friends serve as fiduciaries for beneficiaries, but when friends and family are not able to serve, VA looks for qualified individuals or organizations to serve. The VA fiduciary has authority only over VA benefits.

Legally Recognized Supporter

Law in selected Canadian and other jurisdictions allows individuals who require some decision-making assistance to enter into a "representation agreement"[74] with a support person or network, which is legally recognized by third parties. Under a representation agreement, an individual can authorize one or more "supporters" to assist in managing his or her affairs and help the person to make his or her own decisions. The agreement can be effective immediately or at a future date if circumstances change due to disability, age or another reason requiring support. The agreement can be revoked by the individual, and it can be supplanted by a legally appointed guardianship.

Under the Canadian model, an individual does not have to demonstrate "legal capacity" to enter into a representation agreement. The standard is that the individual has "trust" in the supporter/s in his or her network. This cutting edge alternative to guardianship is gaining international acceptance. Currently, the best resource to learn more about representation agreements is a Canadian nonprofit organization called Nidus, the Personal Planning and Resource Center Registry.[75] Texas has enacted a legally recognized supported decision-making agreement,[76] and in some areas in the U.S. such agreements are informally recognized.

[71] *Revocable Trusts*, American Bar Association Section of Real Property, Trust and Estate Law, *available at* http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/revocable_trusts.html.

[72] *When People Need Help Managing Their Money*, Social Security website, *available at* http://www.socialsecurity.gov/payee/.

[73] Fiduciary, U.S. Department of Veterans Affairs website, *available at* http://benefits.va.gov/fiduciary/.

[74] *Representation Agreement*, Nidus Personal Planning Resource Centre and Registry, *available at* http://www.nidus.ca/?page_id=46.

[75] The Nidus Personal Planning Resource Centre and Registry website is available at http://www.nidus.ca/.

[76] Supported Decision-Making: Alternatives to Guardianship, Texas Council for Developmental Disabilities, *available at* http://www.tcdd.texas.gov/resources/guardianship-alternatives/supported-decision-making/.

LIMIT any necessary petition and order.

> *Judges are not like baseball umpires, calling strikes and balls or merely labeling someone competent or incompetent. Rather, the better analogy is that of a craftsman who carves staffs from tree branches. Although the end result—a wood staff—is similar, the process of creation is distinct to each staff. Just as the good wood-carver knows that within each tree branch there is a unique staff that can be "released" by the acts of the carver, so too a good judge understands that, within the facts surrounding each guardianship petition, there is an outcome that will best serve the needs of the incapacitated person, if only the judge and the litigants can find it* [77]

If no less restrictive measures can reasonably meet the individual's need, and there is risk of significant harm, seek a limited guardianship order transferring authority to a surrogate only in those areas in which decision-making support is needed. A major theme of the UGPPA, is that "limited guardianship or conservatorship should be used whenever possible." Many state laws[78] reflect the emphasis on limited guardianship.

Through completing all of the foregoing PRACTICAL steps, you will gain a solid grasp of the individual's needs, strengths, and deficits—as well as actual or potential substantial harm, and any ways the harm could be addressed without a guardianship. If after this "due diligence" analysis you determine a guardianship is in fact needed as a last resort, aim to limit the scope of the order.

Specify Limits in Petition and Order

There are barriers to petitioning for limited guardianship. Some petition forms don't provide for it. Moreover, conditions change, and going back to court to petition again later for a modification of the order may be at significant cost to—or simply unaffordable for—your client. Some judges may not draft or approve limited orders, reasoning that a plenary order will give more flexibility without coming back to court. But despite these very real barriers, apply the statutory language concerning limited orders if possible.

- Use a good clinical assessment to clarify specific powers that should be retained
- Work with the court and bar to make petition and order forms acknowledge limitations. As a start, using templates for limited orders[79] in your court may work.

Seek Person's Participation in Decision-Making

Even though the guardian is a surrogate decision-maker, he or she should nonetheless consult with and allow the individual to lead in decisions when possible. Ideally, *the guardian is there as a support*, not as an authoritarian voice restricting self-determination.

[77] Lawrence A. Frolik, Promoting Judicial Acceptance and Use of Limited Guardianship, Stetson Law Review (Vol. 31, 2002), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1348105.

[78] *Limited Guardianship of the Person*, AARP Public Policy Institute, *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/Limited_Guardianship_of_the_Person_Chart.authcheckdam.pdf.

[79] The form for the State of Rhode Island Petition for Limited Guardianship or Guardianship is available at http://sos.ri.gov/documents/probate/PC2.3.pdf.

- The UGPPA provides that "the guardian or conservator should always consult with [the individual] to the extent feasible, when making decisions."
- State laws frequently provide that a guardian must seek to maximize the participation of the person in decision-making and be guided by the person's values and preferences.
- Concepts of decision-making participation are embedded in court and guardian standards of practice (*National Probate Court Standards*[80] and *National Guardianship Association Standards of Practice*[81]).

Develop Plan to Maximize Self Determination

Some state laws require guardians to formulate forward-looking plans both as a practical tool and as a baseline of accountability for the courts. But even if a plan is not required, it is a good practice. The NGA *Standards of Practice* require the guardian to develop "a person-centered plan." A plan should not only show anticipated actions and services over the upcoming period, but the means by which the guardian will seek out and incorporate the person's voice.

Reassess for Restoration or Modification

Periodically reassess whether conditions have changed and rights could be restored.[82] Under the NGA *Standards*, a guardian is to "assist the person under guardianship to develop or regain the capacity to manage his or her personal and financial affairs;" and should "seek termination or limitation of the guardianship: (A) When the person has developed or regained capacity . . . (B) when less restrictive alternatives exist; and (C) when the person expresses the desire to challenge the necessary of all or part of the guardianship" (Std #21).

A lawyer representing an individual in a restoration proceeding should:

- Thoroughly interview the person, seeking evidence of changes in abilities or circumstances that would make guardianship unnecessary. Interview those close to the person as well.
- Review evidence from the initial determination. Perhaps it was insufficient, inaccurate or overlooked at the time of the order.
- Ensure there is a solid clinical evaluation.
- Use evidence and testimony from third parties knowledgeable about the person's abilities.
- Articulate plans for overcoming deficits with supports.
- Show that supports are in place or ready.
- Thoroughly prepare the individual for the hearing; and secure any needed accommodations.
- If full restoration is not possible, consider a plan to progressively restore rights.

[80] *National Probate Court Standards*, National Center for State Courts, *available at* http://ncsc.contentdm.oclc.org/cdm/ref/collection/spcts/id/240.

[81] National Guardianship Association Standards of Practice, National Guardianship Association, *available at* http://www.guardianship.org/documents/Standards_of_Practice.pdf.

[82] Jenica Cassidy, *State Statutory Authority for Restoration of Rights in Termination of Adult Guardianship*, Bifocal (Vol. 34, No. 6), American Bar Association Commission on Law and Aging, *available at* http://www.americanbar.org/publications/bifocal/vol_34/issue_6_august2013/guardianship_restoration_of_rights.html.

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making.

Learn more about the ABA entities that produced this Tool:

- Commission on Law and Aging: www.americanbar.org/aging
- Commission on Disability Rights: www.americanbar.org/disability
- Section on Civil Rights and Social Justice: www.americanbar.org/crsj
- Section on Real Property, Trust and Estate Law: www.americanbar.org/rpte

Supported Decision-Making Worksheet

WINGS Working Interdisciplinary Networks of Guardianship Stakeholders

Today's date is: Click here to enter text.

Completed by:

This worksheet/instructions can be used when planning a Supported Decision-Making Agreement. It is designed to assist with explaining supported decision-making and the agreement form as well as to help the person identify areas where he/she/they may need assistance in management or decision-making. It is intended to assist with exploring least restrictive options for adults with disabilities. The questions and information listed below are not exhaustive and are not intended to provide a final determination of what a person should (or should not) do in his/her/their unique circumstances. Information in this worksheet is not a part of the final, notarized Supported Decision-Making Agreement unless expressly stated in that Agreement.

Introduction Instructions:

The introductory paragraph should be read by/to and reviewed by all parties involved, including the decision-maker (Person) and the Supporters. While the Person is required to sign in the presence of a notary, the individual Supporters need only sign the Supporter Appointment Addendum, which will be incorporated into the final document. This is to reduce the burden on the Person to gather multiple supporters at a single time/place each time the agreement is changed.

Questions about enforcement of the agreement should be directed to an attorney.

Supporters are not agents of, nor do they owe a fiduciary duty to the Person. Supporters are not liable for the decisions made by the Principal.

This information should be completed during the course of an interview/meeting with the Person.

Background Information:

Person's Name: Click here to enter text.

Person's date of birth is: Click here to enter text.

Person's phone number: Click here to enter text.

Person's address: Click here to enter text.

Type of address: [e.g., waiver home, private home or apartment, institution?]

Person's e-mail address: Click here to enter text.

My preferred method of communication: (circle) Call, text message, email, mail, in-person
I need the following accommodations for effective communication:

- Current Services and Supports: (describe funding – waiver, private insurance?)
- Service providers: (who would likely need copies of fully executed SDMA)
- Current guardianship status: No guardian, Petition filed, Guardianship established (full/partial/temporary) – County (if applicable)
    - If Restoration of Rights, take additional information on provider contact information
        - Potential Supporters (and contact info) – will want to reach out to them to provide information on SDM and get confirmation that they are willing to serve and what that means.

This information is used to assess various strengths and weaknesses of the person to determine the least restrictive supports necessary to meet his/her/their needs. Determine whether the person can do these things with or without assistance, what assistance may currently be used, or if the person needs more formal support. These topics are designed to be conversational.

☐ **Finances**

Examples: Opening a bank account. Paying my electric bill. Managing and maintaining my Social Security Income. Protecting my assets, like managing my Special Needs Trust.

Questions to Ask: Can you manage money (pay regular bills on time)? Do you know how much money you have at any given time? What sort of things do you like to spend your money on? What do you do if someone you know asks you for money?

Items to Review: Evidence of prior exploitation risk; any trust accounts?
Recommendation:

☐ **Physical Health**

Examples: Scheduling appointments with my doctor. Making treatment decisions. Making decisions about medications. Meeting with treatment team and care providers.

Questions to Ask: Do you decide where, when, and what to eat? Do you follow a prescribed diet and/or take medications as directed? Do you regularly go to the dentist? How are appointments made? How do you get to appointments? Can you communicate decisions about your health with your doctor? Do you understand the consequences of not accepting or following treatment? Do you understand the health consequences associated with high-risk behaviors (drugs, alcohol, overeating, high-risk sexual activity)? What happens if you're in an emergency – what do you do? What do you do when you feel sick?

Items to Review: Observe person's dress/health, may want to review provider/treatment records.

Recommendations:

☐ **Mental Health**

Examples: Scheduling appointments with my doctor. Making treatment decisions. Making decisions about medications. Meeting with my treatment team and care providers.

Questions to Ask: Does the person have a mental illness or symptoms? How are they currently being treated? Similar questions as Physical Health.

Recommendations:

☐ **Legal Matters**

Examples: Finding and working with an attorney. Reviewing contracts. Helping identify when I need an attorney.

Questions to Ask: Are you able to understand and communicate consent regarding legal documents (contracts, POA) or services?

Items to Review: Current POA or other authorizations.

Recommendations:

☐ **Services and Supports**

Examples: Applying for benefits, like Medicaid Waivers, Prior Authorizations, and food assistance. Choosing and coordinating with service providers.

Questions to Ask: Are you able to decide what kinds of services you want? Are you able to select the providers you want? Are you able to communicate approval to share information with others who are not legal guardians?

Items to Review: Current services/supports plans, IPE, ISP, PCP, talk to case manager

Recommendations:

☐ **Education**

Examples: Deciding what type of education, what classes to take, and what help and accommodations I need. Helping transition to work.

Questions to Ask: Are you currently in school or do you have plans to go back to school? Highest level of education reached?

Items to Review: IEP, post-secondary services/supports

Recommendations:

☐ **Work**

Examples: Deciding where I work and how I get to work. Deciding what help and accommodations I need. Applying for and working with Vocational Rehabilitation Services.

Questions to Ask: Are you currently working? Where? How long? What do you do? Salary/wage? Do you like your job? Using VR services? Can you make and communicate choices about employment? Can you direct employment/VR services? What happens if you are sick and can't make it to work? How do you get to work?

Items to Review: IPE, pay stub

Recommendations:

☐ **Community Living/Housing**

Examples: Deciding where I live and what I do. Signing a lease. Helping with hobbies, social interactions, free time, and travel. Providing religious and spiritual guidance.

Questions to Ask: Where do you live? Roommates? Like residence/roommates? Services in housing? Live on their own? Any instances of injury/damage while alone? Do you understand what is involved in managing a home (cleaning, cooking, shopping, maintenance)? Able to access community/services? Transportation? Where do you like to go? Do you know how to avoid common environmental dangers (traffic, sharp/hot objects, poisonous products)? Able to recognize when someone is taking advantage of them? Can person protect/self-advocate for themselves? Do you know who to contact if in danger? Can person identify qualities of appropriate relationships? Appropriate social interactions/social skills? Marriage/relationship? Church/religious affiliations? Does person understand consent to sexual activity (potential consequences of sexual activity)? Do you vote? Does person understand consequences of criminal behavior?

☐ **Other**

This product is supported by grant No. 90EJIG0007-01-00 from the Administration for Community Living (ACL), U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official ACL or DHHS policy.

CHARTING the LifeCourse 

Tool for Exploring Decision Making Supports

This tool was designed to assist individuals and supporters with exploring decision making support needs for each life domain.

Name of Individual: _____

Name of person completing this form: _____

Relationship to individual *(circle one):* Self Family Friend Guardian Other: _____

How long have you known the individual? _____

For each question below, mark the level of support you need when making and communicating decisions and choices in the Charting the LifeCourse life domains.	**I can decide with no extra support**	**I need support with my decision**	**I need someone to decide for me**
DAILY LIFE & EMPLOYMENT			
Can I decide if or where I want to work?			
Can I look for and find a job (*read ads, apply, use personal contacts*)?			
Do I plan what my day will look like?			
Do I decide if I want to learn something new and how to best go about that?			
Can I make big decisions about money? (*open bank account, make big purchases*)			
Do I make everyday purchases? (*food, personal items, recreation*)			
Do I pay my bills on time (*rent, cell, electric, internet*)			
Do I keep a budget so I know how much money I have to spend?			
Am I able to manage the eligibility benefits I receive?			
Do I make sure no one is taking my money or using it for themselves?			
HEALTHY LIVING			
Do I choose when to go to the doctor or dentist?			
Do I decide/direct what doctors, medical/health clinics, hospitals, specialists or other health care providers I use?			
Can I make health/medical choices for my day-to-day well-being? (*check-ups, routine screening, working out, vitamins)*			
Can I make medical choices in serious situations? (*surgery, big injury*)			
Can I make medical choices in an emergency?			
Can I take medications as directed or follow a prescribed diet?			
Do I know the reasons why I take my medication?			
Do I understand the consequences if I refuse medical treatment?			
Can I alert others and seek medical help for serious health problems?			
Do I make choices about birth control or pregnancy?			
Do I make choices about drugs or alcohol?			
Do I understand health consequences associated with choosing high risk behaviors *(substance abuse, overeating, high-risk sexual activities, etc.)*?			
Do I decide where, when, and what to eat?			
Do I understand the need for personal hygiene and dental care?			

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CHARTING the LifeCourse

For each question below, mark the level of support you need when making and communicating decisions and choices in the Charting the LifeCourse life domains.	**I can decide with no extra support**	**I need support with my decision**	**I need someone to decide for me**
SOCIAL & SPIRITUALITY			
Do I choose where and when (and if) I want to practice my faith?			
Do I make choices about what to do and who to spend time with?			
Do I decide if I want to date, and choose who I want to date?			
Can I make decisions about marriage (*If I want to marry, and who*)?			
Can I make choices about sex, and do I understand consent and permission in regard to sexual relationships?			
SAFETY & SECURITY			
Do I make choices that help me avoid common environmental dangers (*traffic, sharp objects, hot stove, poisonous products, etc.)?*			
Do I make plans in case of emergencies?			
Do I know and understand my rights?			
Do I recognize and get help if I am being treated badly (*physically, emotionally or sexually abused, or neglected*)			
Do I know who to contact if I feel like I'm in danger, being exploited, or being treated unfairly (*police, attorney, trusted friend*)?			
COMMUNITY LIVING			
Do I decide where I live and who I live with?			
Do I make safe choices around my home (*turning off stove, having fire alarms, locking doors*)?			
Do I decide about how I keep my home or room clean and livable?			
Do I make choices about going places I travel to often *(work, bank, stores, church, friends' home)*?			
Do I make choices about going places I don't travel to often (*doctor appointments, special events*)?			
Do I decide how to get to the places I want or need to go? *(walk, ask a friend for a ride, bus, cab, car service)*			
Do I decide and direct what kinds of support I need or want and choose who provides those supports?			
CITIZENSHIP & ADVOCACY			
Do I decide who I want to represent my interests and support me?			
Do I choose whether to vote and who I vote for?			
Do I understand consequences of making decisions that will result in me committing a crime?			
Do I tell people what I want and don't want (verbally, by sign, device), and tell people how I make choices?			
Do I agree to and sign contracts and other formal agreements, such as powers of attorney?			
Do I decide who I want information shared with (family, friends etc.)?			

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Stop, Look, and Listen: Planning for Independence and Adult Decision Making Support

Many tools are available to help families and professionals understand the areas of adult decision making in which a person with a disability may need additional support. This tool, however, is concerned primarily with assessing whether or not the environment around an individual decision-maker approaching adulthood is helping that person to prepare appropriately. As families and IEP teams plan for the highest degree of independence possible, this tool is designed to provide valuable insight into learning opportunities that may have been overlooked along the way. Ensuring access to learning opportunities is critical. What many may observe as a deficit due to one's disability may more likely be the result of one's lack of opportunities to build skills related to independence.

"Stop, Look, and Listen" begins with Part 1 and instructions for its completion. Part 1 is all about gathering input from an individual decision maker and at least one adult supporter on the opportunities provided to learn and practice adult skills in critical decision-making areas. The tool continues on to Part 2, providing guidance on putting into action the input gathered in Part 1.

As we enter adulthood, despite increasing access to learning opportunities, many of us may still require some adult decision-making support. For more information on planning for adult decision making support and choosing the least restrictive options for providing that support, visit www.scsupporteddecisionmaking.org.

"Stop, Look, and Listen" is made possible by support from the National Resource Center on Supported Decision-Making and the SC Developmental Disabilities Council-funded initiative, the SC Supported Decision Making Project. The SC Supported Decision Making Project is a collaborative between Protection & Advocacy for People with Disabilities, Inc., The Arc of SC, Family Connection of SC, and Able SC.

SOUTH CAROLINA Developmental Disabilities Council

able SOUTH CAROLINA independent living for all

The Arc of South Carolina

P&A PROTECTION & ADVOCACY FOR PEOPLE WITH DISABILITIES, INC

National Resource Center for Supported Decision-Making
EVERYONE has the Right To Make Choices

Family Connection SOUTH CAROLINA

Stop, Look, and Listen
Part 1: Assessing Opportunities to Learn and Practice in Areas of Adult Decision Making

Who is Completing This Assessment? ☐ Decision Maker ☐ Parent ☐ Teacher ☐ Other: _____

Step 1: For each skill in Part 1, decide how often you have had the opportunity to practice or learn this skill (not at all, some, a lot) and **check the *one* box that fits best**. **Step 2:** Compare the results of the decision maker with the results of a supporting adult, highlighting the areas of agreement where there is little or no opportunity to learn or practice an important, adult skill. **Step 3:** Go on to Part 2 and begin the discussion as a family or as an IEP team on increasing opportunity for skill-building in the areas most important to the independence of that person.	 **I have had the opportunity to learn and practice this skill a lot.**	 **I have had some opportunities to learn and practice this skill.**	 **I have not had opportunities to learn and practice this skill.**
Finances			
Making small purchases (e.g. lunch, snacks, clothing, etc.)	☐	☐	☐
Keeping track of purchases and bills (i.e. budgeting)	☐	☐	☐
Managing a bank account (e.g. online banking)	☐	☐	☐
Understanding when someone is trying to take advantage of me financially	☐	☐	☐
Making big decisions about money (e.g. opening an account, signing a lease, or obtaining a credit card)	☐	☐	☐
Paying bills	☐	☐	☐
Relationships			
Understanding personal boundaries	☐	☐	☐
Speaking up if something doesn't feel right	☐	☐	☐
Recognizing abuse or exploitation	☐	☐	☐
Making choices about romantic relationships	☐	☐	☐
Making choices about sex	☐	☐	☐
Education			
Providing input on my IEP (for example, goals I want to reach or how I feel about school)	☐	☐	☐
Understanding my accommodations and requesting them	☐	☐	☐
Asking for support when I need it	☐	☐	☐

The "Stop, Look, and Listen" tool was inspired by the resource, "Identifying Alternatives to Guardianship," developed by the University of Missouri Kansas City's Institute of Human Development.

Choosing how I want people to help me	☐	☐	☐
	 **I have had the opportunity to learn and practice this skill a lot.**	 **I have had some opportunities to learn and practice this skill.**	 **I have not had opportunities to learn and practice this skill.**
Employment			
Communicating about what I want to do for work	☐	☐	☐
Working on the job independently and asking for help appropriately	☐	☐	☐
Behaving professionally with bosses and co-workers	☐	☐	☐
Applying and interviewing for a job	☐	☐	☐
Health			
Taking the right prescription medicine at the right time	☐	☐	☐
Communicating with healthcare professionals about how I am feeling	☐	☐	☐
Explaining in my own words how I am affected by my disability or health conditions	☐	☐	☐
Managing appointments and knowing when to go to the doctor	☐	☐	☐
Making choices about how I want people to support me in matters related to my health	☐	☐	☐
Home and Community			
Choosing and doing things that I enjoy when I have free time	☐	☐	☐
Using the transportation options available to me to travel as independently as possible	☐	☐	☐
Knowing what to do in the event of an emergency	☐	☐	☐
Completing chores and maintaining a clean living space	☐	☐	☐
Cooking meals and preparing snacks	☐	☐	☐
Understanding proper nutrition and planning meals	☐	☐	☐
Purchasing items needed for daily living	☐	☐	☐
Other Skills			
	☐	☐	☐

The “Stop, Look, and Listen” tool was inspired by the resource, “Identifying Alternatives to Guardianship,” developed by the University of Missouri Kansas City’s Institute of Human Development.

Part 2: Planning for Independence

Now that we have taken a look at the opportunity to learn and practice specific skills, two things should happen:

1. If we have not yet begun to do so, we should begin having open conversations about how to increase opportunities to learn and practice critical, adult skills that promote independence. Part 2 of this tool was designed to help you do just that. Please keep in mind that some of these suggested activities may seem overwhelming at first but may be easily accomplished with the support of the IEP team, service provider agencies, and the like.
2. Few are ready for adulthood in every possible way upon reaching the age of 18. As you are working on making sure that home and school are aligned to promote independence, it is also important to consider what options may be available for supporting adult decision making. In other words, upon reaching 18, how will an individual be supported in making adult decisions where skills are currently lacking? This can be done formally through planning and a Supported Decision Making Agreement or more informally. Like surgery for a medical condition, a process like guardianship should be the last option considered. For more on Supported Decision Making, visit www.scsupporteddecisionmaking.org

Discussion Questions:

1. What are our biggest decision making and adult skill concerns? What are the strongest areas of adult skill and decision making?
2. Are there areas where our IEP team or our family's practices can and should better address adding opportunities to learn and practice adult skills and decision making? Are we all aiming for independence and challenging our assumptions about possible areas of dependence?
3. As a family or an IEP team, do we understand the many available ways to support an adult decision maker that do not include the removal of rights through guardianship? If not, do we know how to find resources that may help in that conversation?

Activities to Promote Independence

Finances	Relationships	Education	Employment	Health	Home and Community
+ Mock budgeting exercises + Community-based practice with purchases + Roleplay financial scenarios + Begin using a bank account with a limited amount put into it each month alongside a budgeting activity	+ Roleplay relationship scenarios + Use examples and non-examples of appropriate relationship behavior + Some uncomfortable topics, like sex, are avoided. Teach youth explicitly about sex, boundaries, and consent	+ Support youth in understanding their role in the IEP meeting and providing input verbally, in writing, or through a multimedia presentation + Create a plan with youth for how they want support in an IEP meeting and in the classroom	+ Community-based, real-life employment experiences are the best way to learn about employment + Help supervisor to formalize feedback and help youth understand employment-related consequences on the job + Teach job attainment skills explicitly	+ Use an app or a planner to begin taking responsibility for medications + Support youth in talking to healthcare professionals + Plan for the role of youth in appointments + Begin setting appointments *with youth* instead of *for youth*	+ Provide training in travel like using public transportation or ride sharing. Increase independence the same way you might if one were learning to drive + Create emergency plans together + Teach independent living skills explicitly + Plan together on how chores will get done

The "Stop, Look, and Listen" tool was inspired by the resource, "Identifying Alternatives to Guardianship," developed by the University of Missouri Kansas City's Institute of Human Development.

Decision-Making Worksheet

Choices I Make	Do I need Help?			Who Could Help Me?
	Yes	No	Sometimes	
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

Supported Decision-Making Agreement

WINGS
Working Interdisciplinary Networks of Guardianship Stakeholders

This agreement should be reviewed by all parties to the agreement. The form of communication shall be appropriate to the needs and preferences of each party. The adult should sign in the presence of a notary. Each Supporter will acknowledge by signature his/her/their role as determined by the adult.

This document is not intended to create an agency agreement between the adult and any Supporters listed in this document. Supporters do not owe a fiduciary duty to the adult subject to the agreement, and have no authority to make decisions for the adult.

If you have any questions about your legal rights, please talk to an attorney.

Notice to Third Parties: Under Indiana law, a request or decision made or communicated with the assistance of a supporter shall be recognized as the request or decision of the adult. An agreement that complies with Indiana Code 29-3-1-14(7) is presumed valid. A party may rely on the presumption of validity unless the party has actual knowledge that the agreement was not validly executed. A person who, in good faith, relies on or declines to honor an authorization in an agreement is not subject to civil or criminal liability or to discipline for unprofessional conduct. A supporter who performs supported decision making in good faith as specified in an agreement is immune from civil or criminal liability resulting from the adult's decision unless the act or omission amounts to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

Today's date is:

My full name is:

My date of birth is:

My telephone number is:

My address is:

My e-mail address is:

I want to have people I trust help me make decisions. The people who will help me are called **Supporters**. I can say what kind of help my supporters will give me.

I understand:

☐ I can talk to an attorney before I sign this agreement.

☐ This agreement is because I want Supporters to help me make decisions.

☐ My Supporter cannot make decisions for me.

☐ My Supporter is not liable for any consequences or decisions I make unless my Supporter's actions or omissions amount to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

☐ I can end or change this agreement when I want to. I must let my Supporters know about any changes I make to this agreement. Anyone with a copy of the agreement should get a copy of the change in writing.

☐ I can change my list of Supporters when I want to.

☐ My Supporter(s) can quit if he/she/they wants to.

If I have more than one Supporter in any area, I want those Supporters to work jointly (together) unless I note otherwise below or in the Supporter Appointment Addendum.

I want support to help me make decisions about:

☐ **Finances**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Physical Health**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ **Mental Health**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Legal Matters**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ **Services and Supports**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Education**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ **Work**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Community Living/Housing**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

☐ **Other**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

☐ **Other**

Supporter(s):

How I want help:

Topics/Tasks for specific help:

(Continued next page)

I understand that certain documents may give my Supporters more authority in my life or access to my personal information. I am including those documents as part of this agreement:

- ☐ Authorization for Release of Records
  - ☐ Health Insurance Portability and Accountability Act (HIPAA) Release
  - ☐ Family Educational Rights and Privacy Act (FERPA) Release
  - ☐ Other Release
- ☐ Letters of Guardianship [☐ Temporary / ☐ Permanent]
  - ☐ Guardianship of the Person and Estate
  - ☐ Guardianship of the Person
  - ☐ Guardianship of the Estate
- ☐ Power of Attorney
- ☐ Protective Order
- ☐ Educational Surrogate Authorization
- ☐ Trust Documents
- ☐ Health Care Representative Authorization
- ☐ Psychiatric Advanced Directive
- ☐ Representative Payee Authorization
- ☐ Living Will
- ☐ Other

List of Supporters

Supporter Name	Addenum Attachment No.

Signature of Adult

This supported decision-making agreement starts right now and will continue until the agreement is stopped by me. I have reviewed, agree with, and understand all the information contained in this agreement.

My signature: _____

My full name:

Today's date:

Guardian Consent (*if applicable*)

I am the legal guardian for the above-named individual. I consent to this Agreement.

Notes or limitations (if any):

My signature: _____

My full name:

Today's date:

Signature of Notary

State of

County of

This document was acknowledged before me on (date)

by (name of person completing this form).

_____ _____

Signature of Notary Printed Name of Notary

Notary Seal, if any:

My commission expires _____

WARNING: PROTECTION FOR ADULTS WITH A DISABILITY
If a person who receives a copy of this agreement or is aware of the existence of this agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to **Indiana Adult Protective Services** at **(800) 992-6978**.

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Addendum Attachment No. ____

Supporter Appointment Addendum

My Supporters do not make decisions for me. I appoint the following person as my Supporter:

Full name ____

Address ____

Email ____ Telephone ____

Relationship to adult: ____

I want this Supporter to help me with decisions related to:

- ☐ Finance
- ☐ Physical Health
- ☐ Mental Health
- ☐ Legal Matters
- ☐ Services and Supports
- ☐ Education
- ☐ Work
- ☐ Community Living/Housing
- ☐ Other

Exceptions/limitations to these areas:

- ☐ Supporter may work with other Supporters.
- ☐ Supporter may share information with other Supporters.

I want this Supporter to help me by:

- ☐ Giving me information in a way I can understand.
- ☐ Be with me when obtaining information about my decision.
- ☐ Discussing the good/bad (pros/cons) that can happen.
- ☐ Helping me advocate for me decision.
- ☐ Helping me communicate my wishes to others.
- ☐ Other: ____

Addendum Attachment No. ____

Supporter Consent

I, _____, consent to act as Supporter for _____ (Adult). I know I may not make decisions for Adult. I understand that my job as Supporter is to honor and express Adult's wishes. I will support the will and preference of Adult, and not my opinion of Adult's best interests. I will act honestly, diligently, and in good faith, and I will act within the scope set forth in the Supported Decision-Making Agreement. I will avoid conflicts of interest.

I understand the relationship between Adult and Supporter is one of trust and confidence, and serves to preserve the decision-making authority of Adult. I understand that I am not becoming an agent for Adult and I am not liable for the consequences of Adult's decisions. I understand that I am not a surrogate decision maker for Adult and that I do not have authority to sign legal documents on behalf of Adult or bind Adult to a legal agreement unless expressly specified in a separate legal document.

As Supporter, I understand that I am prohibited from:

- exerting undue influence upon Adult;
- receiving a fee for service related solely to services performed in the role of Supporter;
- obtaining, without the consent of Adult, information acquired for a purpose other than assisting Adult in making a specific decision authorized by the Supported Decision-Making Agreement; or
- acting outside the scope of authority provided in the Supported Decision-Making Agreement.

I will notify Adult in writing if I intend to resign as Supporter.

Signature _____

Date _____

STATE OF INDIANA)
)
COUNTY OF _____)SS:
)
IN THE MATTER OF)
THE GUARDIANSHIP OF)
)
_____)
PERSON

IN THE _____ COURT

CAUSE NO. _____

Medical Report

1. General Information

Name _____ Phone (_____)_____

Office Address _____

_____

What is your License/Certification? _____

What is your area of specialty? _____

I last examined the Person on _____ 20_____

□ YES □ NO The Person is under my continuing treatment.
If "YES," how long have you been treating the Person? _____

2. Evaluation of the Person's Physical Condition

Physical Diagnosis: _____

Severity: □ Mild □ Moderate □ Severe

Prognosis: □ Continuing □ Degenerative □ Recovering □ Relapsing/Remitting

Treatment/Medical History/Additional Comments: _____

_____

_____

3. Evaluation of the Person's Mental Functioning

The Person is oriented to the following (check all that apply):

□ Person □ Time □ Place □ Situation

Do you have concerns about the Person's functioning in the following areas? (check all that apply)

YES	NO	UN-KNOWN	FUNCTION
			Short-term memory
			Long-term memory
			Immediate recall
			Understanding and communicating (verbally or otherwise)
			Recognizing familiar objects and persons
			Solving problems
			Reasoning logically
			Grasping abstract aspects of his or her situation
			Interpreting idiomatic expressions or proverbs
			Breaking down complex tasks into simple steps and carrying them out

Mental Diagnosis: _____

Severity: □ Mild □ Moderate □ Severe

Prognosis: □ Continuing □ Degenerative □ Recovering □ Relapsing/Remitting

Treatment/Medical History/Additional Comments: _____

_____

_____

4. Medication Information

□ YES □ NO Is the Person currently taking medication related to Person's physical or mental functioning as reported in sections 2 and 3? If "YES," please list:

_____

_____

Additional Comments: _____

_____

_____

5. Decision-Making

Is the Person able to make decisions regarding the following:

YES	WITH SUPPORT	NO	UN-KNOWN	ACTION/DECISION
				Make complex business, managerial, and/or financial decisions.
				Manage a personal bank account. If "YES," or "WITH SUPPORT," should amount deposited in any such bank account be limited? □ YES □ NO
				Pay his or her own bills.
				Safely operate a motor vehicle.
				Make decisions regarding marriage.
				Determine the Person's own residence.
				Live alone.
				Obtain food.
				Administer own medications daily.
				Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, and/or toileting) with/out services.
				Attend to instrumental activities of daily living (e.g., shopping, cooking, traveling, and/or cleaning).
				Make appropriate judgments that will protect them personally, physically, and/or financially.
				Consent to medical and dental treatment.
				Consent to psychological and/or psychiatric treatment.

Additional Comments: _____

_____

_____

"Incapacitated person" means an individual who:
(1) cannot be located upon reasonable inquiry;
(2) is unable:
(A) to manage in whole or in part the individual's property;
(B) to provide self-care; or
(C) both;
because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or
(3) has a developmental disability (as defined in IC 12-7-2-61).

Ind. Code § 29-3-1-7.5

(a) "Less restrictive alternatives" means an approach to meeting a person's needs that restricts fewer rights of the person than would the appointment of the guardian.
(b) Less restrictive alternatives may include, but are not limited to, the following:
(1) A supported decision making agreement (as defined in IC 29-3-14-2).
(2) Appropriate technological assistance.
(3) The appointment of a representative payee.
(4) The appointment of a health care representative (as defined in IC 16-36-1-2).
(5) The creation of a power of attorney (as defined in IC 30-5-2-7).

Ind. Code § 29-3-1-7.8

6. Evaluation of Less Restrictive Alternatives

According to the definition in Indiana Code § 29-3-1-7.8 and based upon your last examination and observations of the Person, in your opinion, the following less restrictive alternatives could be considered or implemented:

YES	NO	UN-KNOWN	LESS RESTRICTIVE ALTERNATIVE
			Supported decision making agreement
			Appropriate technological assistance
			Representative payee
			Health care representative
			Power of attorney
			Other_____

7. Evaluation of Capacity

According to the definition in Indiana Code § 29-3-1-7.5 and based upon your last examination and observations of the Person, in your opinion, the Person is:

□ Not incapacitated
□ Not incapacitated with use of less restrictive alternative: _____
□ Partially incapacitated
□ Personal OR □ Financial
□ Totally incapacitated

Additional Comments: _____
_____
_____

8. Recommendation of Living Arrangement

In your opinion, what is the least restrictive living arrangement that you consider appropriate for the Person?

□ At home/at home with services
□ Community based residence
□ Facility based residence
□ Hospital based residence

Additional Comments: _____
_____
_____

9. Ability to Attend Court Hearing

□ YES □ NO There is a threat to the Person's health and/or safety that would prevent them from attending the court hearing.

10. Additional Information of Benefit to the Court

Please provide any additional information that would benefit the court.

_____
_____
_____

11. Additional Professional Evaluations

If the descriptions of the Person's condition or skills is based on evaluations or assistance by other professionals, please provide the names and contact information of those professionals who are able to provide additional information or evaluations.

Professional's Name_____ Phone (_____)_____

Office Address or E-mail _____
_____

Professional's Name_____ Phone (_____)_____

Office Address or E-mail _____
_____

I affirm under the penalties for perjury that the foregoing representations are true.

_____ _____
Signature Date

_____
Name Printed