

## Legal Considerations for Medical Providers Regarding Guardianship and Power of Attorney

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*Mr. Miller's responses are in red, Ms. McLerran's responses are in blue.*

[Guardianship Association of Iowa Network \(GAIN\)](#)

QUESTION: I had a client who felt her rights were violated when her guardian restricted her from going to a family wedding. There were some legitimate concerns due to past trauma on behalf of family, but who should the client contact in a situation like this for the decision to be reviewed?

ANSWER: The guardian may place reasonable time, place, and manner restrictions on a Protected Person's contact with an individual or attendance at an event. If the Protected Person believes his or her rights are unreasonably restricted, the Protected Person should contact his or her attorney and have the Court review the situation to see if the restriction is reasonable and necessary. There isn't really anyone that "supervises" or reviews guardians, but we have had people contact GAIN with those types of questions and we are willing to reach out to individuals to see if we can assist in finding solutions. There may also be other issues that need to be addressed such as supervision, transportation, dietary, and safety concerns that are sometimes contributing factors. Please feel free to refer GAIN to anyone that has a guardianship question.

QUESTION: I've been in a situation where I take over as PCP for a patient and they have end-stage dementia and no POA or guardian-what's the first step in that situation?

ANSWER: Because the patient likely does not have "testamentary capacity," a POA is not a viable option. Testamentary capacity is the baseline capacity a person must have to execute estate planning documents. This requires an understanding of their personal and financial decisions, the ability to comprehend various available options, and the reasoning skills to understand how their choices affect their situation. **Because the POA is not available as an option, a guardianship is the only available option in designating a substitute decision-maker.** Often, the Court will allow the Guardian to be appointed on a temporary basis if the Guardian is able to show good cause for such appointment. This allows the Guardian to make various decisions within the couple of months it takes to gather the necessary information, file reports, and have the hearing for permanent guardianship. Yes, guardianship is likely the only option, but I would also say that the first step is actually finding someone that is willing and appropriate to serve in the capacity. If the client has money, he/she will also likely need a conservator. IF there is a family member that is willing to serve, then they need to contact an attorney for assistance and someone will need to pay for the legal fees.

QUESTION: What is the appropriate first step when we as the PCP disagree with the POA and feel their decision-making is not in the best interest of the patient?

ANSWER: The first step is to have a conversation with the agent regarding why you believe his or her decision is not in accordance with the principals of substitution decision making or best interests of the patient. You will want to thoroughly document this conversation in your file. If this conversation does not satisfy your concerns, determine how time-sensitive the situation is. If time is not of the essence, invoke Court jurisdiction to help with the decision. I agree that the first step is to ask why they disagree to see if their concerns or reasoning makes sense and offer education or a second opinion. If you feel that the decision is "self-motivated" then I think it is important for you to understand and try to remind the acting agent that it is your understanding of their role to make decisions as if the individual would. You may always report it to the Department of Human Services Adult Abuse. As Nathan suggested, Court action can be taken to remove an agent.

QUESTION: Can a client request change of guardian, if so what is the process?

ANSWER: The client's attorney can simply file a motion to reconsider the guardianship to evaluate who is best suited to act as Guardian. This can be done periodically, as long as the Court determines such reconsideration is reasonable. The "old" code section prohibited making more than one such contest/request per six-month period. Yes, they can request a change in guardian, but my first question is why are they requesting a new guardian? Please remember that there are times that guardians have to make decisions that may upset the client and their first response is to be angry about that. Additionally, there has to be someone else willing to serve in that role. There might be an opportunity to educate the guardian and allow them to continue in that role. GAIN offers educational opportunities and training for guardians as well.

QUESTION: Where does an I-POST (Iowa Physician Orders for Scope of Treatment) fit into this discussion about decision making around end of life care?

ANSWER: Assuming the document was executed by a person while he or she had requisite capacity, this document provides helpful guidance to a Guardian or agent. The Guardian and agent are acting as substitute decision makers. As such, the decision-making should substitute the decision the person would have made when the person had capacity. The IPOST Form provides such decisions to the Guardian or agent. Unless such decisions have been revoked or changed in the meantime, the Guardian or agent should follow the guidance provided on the form. We absolutely use that as guidance if it was signed prior to the POA or guardianship appointment. IF it was NOT signed prior to the appointment, then a guardian **is not authorized to sign this stating that the client is a DNR** and would **need to obtain a court order** requesting authority to make that decision. The end-of-life laws and restrictions were enacted **prior** to the IPOST being created but the intent is still the same, so it cannot be used as a "work around."