

Overview – Video 5

Role of the Guardian Video

(Introductory music and images)

Speaker appears in comfortable, neutral “home” setting. At times words and pictures will appear next to them or in place of them to support the dialogue.

Speaker: Once you are appointed as a guardian, you need to keep a copy of the court order appointing you as guardian, called a Final Decree, in a safe, easily accessible place. The court may also provide you with a guardianship certificate that can be used as verification of your role as guardian in place of the Final Decree. Your Final Decree, and Guardianship Certificate if you receive one, should be provided to medical and other service providers, financial institutions such as banks, and residential facilities as needed to carry out your duties as guardian.

The type of guardianship, whether of the person, of the estate, or both, will determine your duties. If you are the guardian of the estate, you need to ensure the incapacitated person’s bills, expenses, and taxes are paid on time.

If you are guardian of the person, you need to ensure that you or a service provider assist the incapacitated person with personal needs to the extent necessary.

Whether you are guardian of the person, estate, or both, organization is key. Keeping track of paperwork; developing a filing system; and keeping a log of your visits, meetings, appointments, and financial transactions related to the guardianship will help you manage the incapacitated person’s care and make it easier to complete your annual report to the court.

It is important that you keep in mind your ethical obligations as a guardian when you weigh decisions about the incapacitated person’s care or finances. The incapacitated person has the right to live in the least restrictive environment that meets their needs; engage with their community and loved ones; participate in decision-making as much as possible; and trust that you will consider their needs, desires, beliefs, and safety when you make any decisions on their behalf.

You need to be diligent in overseeing the care and affairs of the incapacitated person. Ensure their caregivers, medical and service providers, family members, and financial institutions have a way to contact you at all times.

Make plans for their care and the management of their finances when you are not available including when you are going out of town, or if you become sick, hospitalized, incapacitated, or die. If you are going to be unable to perform your role as guardian for an extended period of time, you should notify the Clerk of the Orphans’ Court in the county where the guardianship was ordered, as well as any other Guardian office or administrator in that county. You may also file with the Clerk of the Orphans’ Court a request for a Review Hearing to bring this concern to the attention of the Judge. You should also make a note of this issue when you file your next annual report.

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You must also demonstrate loyalty and trustworthiness by putting the needs of the incapacitated person before your own and honoring their wishes. This means you may need to make choices that are less convenient for you or that differ from your personal preferences.

It is important to protect the incapacitated person by keeping their private information confidential, keeping them safe from harm and abuse, and protecting their assets, meaning their money as well as their personal property and real estate.

The Pennsylvania Uniform Firearms Act makes it illegal for an incapacitated person to “possess, use, control, sell, transfer, or manufacture a firearm”. The act also prohibits incapacitated persons from having a license to possess firearms. If the incapacitated person owns firearms, it is important to ensure compliance with this statute for their safety and the safety of others. While it is legal for the incapacitated person to live in a setting where firearms are present, it is important to ensure precautions are taken, such as keeping the guns in a locked location that is not accessible by the incapacitated person, to maintain a safe living environment. Firearms owned by the incapacitated person must be sold or transferred to another person who is not a member of the incapacitated person’s home within 60 days after appointment of a guardian.

Remember that while decision-making is an important piece of being a guardian, the incapacitated person should always be involved in the decision-making process to the extent possible. Let’s check in with Anne and Bob as they navigate decision-making with their mother, Rachel.

Anne and Bob are sitting in Anne’s living room.

Anne: Mom has always been so independent. I think it’s important that she continues to make her own choices even now that you have been appointed as her guardian.

Bob: I agree and I’m thinking we may want to try supported decision-making with mom.

Anne: What is supported decision-making?

Bob: We use it all the time when we make decisions for ourselves, without even knowing we are using it. For example, if you have to buy a new car, you might ask Uncle Jay for advice since he is a mechanic, but in the end, you are still the one who makes the decision about what car to buy. For certain decisions, mom will be able to use supported decision-making by checking in with her supporters, friends, family - people she trusts - before ultimately making her own decision.

Anne: That makes sense, and should make mom happy too.

Bob: Yes, but there may be certain decisions she can no longer make for herself because she can’t fully understand the decision, options, outcomes and risks. In these situations, I’ll need to make decisions on her behalf as her guardian.

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Anne: How do you know what is the best option?

Bob: You and I have always been close with mom and have a good sense of her preferences, wishes, and beliefs. With this information, in my role as guardian, I can use substituted judgement and make the decision that I think mom would make if she could. You and I can discuss the options and make a decision together for mom.

Anne: That makes sense, but what if you need to make a decision about something Mom never talked about, and we don't know what she would choose?

Bob: Well, as her guardian, if I don't know enough about what mom's preference would be, I would want to make the decision based on mom's best interest. I'd have to choose the best option based on the circumstances and potential risk and reward of each choice. When possible, I will discuss the options with you, her doctor, or even her friends before I make a decision.

Speaker: Any time that you are making a decision for the incapacitated person, it is important that you have a good understanding of the circumstances surrounding the decision, available options, and short- and long-term effects of each. Do not be afraid to ask follow-up questions of experts who may be advising you, such as doctors or bankers, so you can be sure you fully understand the situation before making a decision.

To advocate for the incapacitated person, you must understand their needs, wishes, wants, and beliefs. It is important to stay in contact with them, so you are aware as their needs and desires change. You also have a responsibility to stay informed about their condition and situation. Furthermore, it is your role to speak up for them and ensure their voice is heard in all aspects of decision-making when they are unable to speak for themselves.

As mentioned previously, being an advocate for the incapacitated person is ensuring they have access to appropriate services, benefits, and care in the least restrictive environment that will meet their needs. You also must protect their rights and freedoms while making sure their needs are being met.

As a guardian, the work you do is essential to the safety and wellbeing of the incapacitated person. It is important to be organized, diligent, ethical, and an advocate for the incapacitated person in all that you do.

If you have any questions or concerns about your role as guardian, it may be helpful to consult with an attorney, the court, a professional guardian, or online resources such as the National Guardianship Association. The court has entrusted you with the care of another individual and is a source of information and support as well.

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