GUARDIANS AND ATTORNEYS-IN-FACT

Who may have a guardian?

A county's superior court may appoint a guardian for an incapacitated person.[1] An "incapacitated" person is:

- A person under 18 years of age;[2] or
- A person whom the court determines has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety;[3] or
- A person whom the court determines is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.[4]

Who is an "incompetent" person for purposes of giving informed consent for health care?

For purposes of giving informed consent for health care, an "incompetent" person is: [5]

- A person so affected by mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity that caring for himself or herself or managing his or her property, or both, is impossible.
- A person who is "incapacitated" as set forth above.

Who may be a guardian?

Any suitable person over the age of 18, or any parent under the age of 18, may be appointed guardian of an incompetent patient.[6]

A person may not act as guardian if he or she is of unsound mind or has been convicted of a felony or of a misdemeanor involving moral turpitude.[7]

The court may refuse to appoint a person as guardian if the court finds that person unsuitable.[8]

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[1] RCW 11.88.010(1).
[2] RCW 11.88.010(1)(d).
[3] RCW 11.88.010(1)(a).
[4] RCW 11.88.010(1)(b).
[5] RCW 11.88.010(1)(e).
[6] RCW 11.88.020(1).
[7] RCW 11.88.020(1)(b)–(c).
[8] RCW 11.88.020(1)(f).

Can a guardian give informed consent?

Yes. If a patient is incompetent to give informed consent, a physician may obtain valid consent from the patient's court-appointed guardian.[9] A physician's duties to the guardian are the same as to the patient. The guardian must be informed of all material risks, benefits, and alternatives.[10] See **INFORMED CONSENT**. A consent form is valid if signed by the patient's court-appointed guardian.[11] A guardian may not involuntarily commit the alleged incapacitated person for mental health treatment, observation, or evaluation unless the procedures for involuntary commitment have been followed.[12] A guardian may not give consent to psychosurgery, to therapy or any other procedures that induce convulsions, or to any psychiatric or mental health procedures that restrict the patient's ability to move or, if the patient has been involuntarily committed, in any way restrict the rights granted to involuntarily committed patients under Washington law.[13] A guardian may authorize consent for electroconvulsive therapy, however, if the alleged incapacitated person consented to inpatient admission and electroconvulsive therapy in a mental health advance directive.[14]

Who may be an attorney-in-fact?

A person may designate another person to act as his or her attorney-in-fact by signing a document called a "power of attorney." The writing must show the intent of the person that the authority conferred on the attorney-in-fact shall be exercisable in the event of the person's later disability or incapacity. All acts done by the attorney-in-fact during any period of disability, incompetence, or uncertainty as to whether the person is dead or alive, have the same effect as if the person were alive, competent, and not disabled.[15]

What should a physician do before relying on an attorney-in-fact?

The physician should be provided with a power-of-attorney that requests the physician to accept the attorney-in-fact's authority to act on behalf of the patient. The attorney-in-fact should also present a sworn affidavit verifying his or her identity and the conditions under which he or she has assumed the role of attorney-in-fact. Such conditions must include, among others, that the patient was competent and not under undue influence when the power of attorney was signed, and that the attorney-in-fact has no knowledge that the power-of-attorney has been revoked, modified, or limited. (See RCW 11.94.040 for the complete list of conditions.) Once the physician has examined the power-of-attorney and confirmed the identity of the attorney-in-fact, the physician may rely on the power-of-attorney, so long as that reliance is in good faith, and the physician has no reason to know that any of the statements in the sworn affidavit are untrue.[16]

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[9] RCW 7.70.065(1)(a)(i).
[10] See RCW 7.70.050.
[11] See RCW 7.70.060(1).
[12] RCW 11.92.043(5).
[13] RCW 11.92.043(5)(a)–(c).
[14] RCW 11.94.010(3)(b).
[15] See RCW 11.94.010(1).
[16] See RCW 11.94.040.

May a person authorize an attorney-in-fact to provide informed consent for health care decisions?

Yes. A person may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the person's behalf by so stating in the written power of attorney.[17]

The following persons, however, may not act as the attorney-in-fact to provide informed consent for a person unless they are the spouse, state registered domestic partner, adult child, or brother or sister of the person:

- The person's physicians.
- The physician's employees.
- The owners, administrators, or employees of the health care facility or long-term care facility where the person resides or receives care.[18]

[17] RCW 11.94.010(3)(a).
[18] RCW 11.94.010(3)(b).