

NEW JERSEY SUPREME COURT RULES
R. 4:86-2(B)

Effective September 1, 2004, the NJ Supreme Court approved rule changes permitting the use of a NJ licensed clinical psychologist as one of the two certifications submitted in capacity matters (Guardianship).

NJ LICENSED PSYCHOLOGISTS

The Board of Psychological Examiners, NJ Department of Law and Public Safety, governs the practice of psychology. A person becomes a psychologist by virtue of the license granted by the Board based on an earned doctorate degree from a fully accredited institution within the national academic community. The most represented doctoral degrees for psychologists are: Doctor of Philosophy (Ph.D.), Doctor of Education (Ed.D.), and Doctor of Psychology (Psy.D.). The psychologist is expected to practice in his/her area of expertise.

PSYCHOLOGIST CERTIFICATION STATEMENT

The psychologist completes a certification prepared by an attorney attesting to the findings of capacity/incapacity in the psychological assessment. The psychologist's assessment is attached to the certification to the Court.

NJ ADVANCE DIRECTIVES FOR MENTAL HEALTH CARE ACT

Effective March 21, 2006, NJ law *N.J.S.A. 26:2H-102* affords a patient the right to specify mental health services and treatment preferences in the event the person is determined to lack decision-making capacity. Proxy and/or instruction directives may be executed along with registration overseen by the NJ Department of Mental Health Services.

GUARDIANSHIP

Guardianship is a legal relationship in which one person is authorized to make decisions on behalf of another person. The Court determines a person's abilities and incapacities and considers the person's need for appointing a Guardian.



GANJI NJPA

The Mission of the Guardianship Association of New Jersey, Inc., is to be a resource for guardians and advocates including families, professionals, and concerned individuals who are involved in the lives of persons needing assistance. The organization provides education and a referral network and promotes ethical standards of practice.

www.ganji.org
Toll Free: 1-877-GUARDNJ
973-927-5714

The Mission of the New Jersey Psychological Association is the advancement of psychology as a science, as a profession, and as a means of promoting health and human welfare in an atmosphere that supports the diversity of its members and the society at large.

www.psychologynj.org
973-243-9800
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EDUCATION INSTITUTE
Pamphlet Series

5

**GUARDIANSHIP AND
SURROGATE DECISION MAKING**

**The Psychological
Assessment**

**Information for Professionals and
Families**

Helpful Hints for
Judges
Attorneys
Physicians
Psychologists
Social Workers
Case Managers
Families

The Guardianship Association of
New Jersey, Inc. (GANJI)
Affiliate, National Guardianship Association

The New Jersey Psychological Association
(NJPA)
Affiliate, American Psychological Association

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Each Education Institute publication treats an aspect of Guardianship. Other issues apply to individual cases. Users are advised to consult an attorney if legal action is contemplated.

Download additional copies from www.ganji.org

SURROGATE DECISION MAKING

NON-JUDICIAL

The following documents do not need to be ordered by a Judge. If a person can understand what he or she is signing, these documents may prevent the necessity of Court action for Guardianship.

DURABLE POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make financial and legal decisions as well as to access records.

MEDICAL POWER OF ATTORNEY may be limited or general and allows a person to choose an Agent to make medical decisions and to access records.

ADVANCE DIRECTIVE (informally "living will"; usually in the same document as the Medical Power of Attorney) states the medical/mental health treatments a person would accept or refuse if or when unable to communicate choice.

JUDICIAL

The following authority must be ordered by a Judge.

CONSERVATOR is a person appointed by a Court to manage the financial responsibilities of a person who requires assistance, is not mentally incapacitated, and consents to the Conservatorship.

LIMITED GUARDIAN recognizes that a person may need assistance in only some areas. The Guardian's limitations are specified in the Court Order.

GENERAL GUARDIAN applies to a person who cannot make decisions. The Guardian is authorized to make legal, financial, personal, and medical decisions for the person deemed by the Judge to have a mental incapacity.

WHAT TO LOOK FOR IN AN ASSESSMENT

A Generic Outline (*starred items are required by the Court)

Client Identifying Information

Date of birth *Age Residence School/Work Day Program

Reason for Referral

Assessment of capacity for self determination

Possible need for a guardian

Background Summary

Family background Education Employment Military Service

Medical conditions Medications Hospitalizations *Language

Physical limitations Cognitive level *Communication Style Values

Behavioral Observations

*Height *Weight Eye color *Hair color

Interests Strengths Limitations Social activities

Abuse Self-neglect Hoarding behavior

*Activities of daily living *Instrumental activities of daily living

Decision-making opportunities/history

***Techniques**

Clinical interview Collateral interview Record review

Objective testing (i.e., cognition, dementia, adaptive behavior, neuropsychology, etc.)

Results of Testing

Scores Interpretation of test results

Integration of Findings

Understanding of Guardianship

Ability to govern/manage affairs in *areas of decision making: legal, residence, education, vocation, financial, medical decisions involving informed consent; *specific responsibilities to retain (i.e., voting, etc.)

*Plans for further education/training *Ability to attend court hearing

***Diagnosis**

***Prognosis**

Summary

Common *Recommendations

Lacks capacity and is in need of a limited or general Guardian of person and/or property

Has capacity and is in need of a reversal of Guardianship

Has capacity and is not in need of a Guardian

*Limited Guardianship possibility must be noted in all cases

NOTE: The assessment should describe the person and not define him/her by diagnosis alone or statistical probability alone. It should illustrate how the disability or medical condition interferes with reasoning and decision making. The assessment should identify the permanent incapacity or declining capacity. Conclusions must be supported by evidence (examples). Avoid unexplained jargon.

REFERENCES

GUARDIANSHIP STATUTES

N.J.S. 3B:12-19 et seq. applies to all persons who may need limited or general guardianship and may involve guardianship of the person and/or property

N.J.S. 30:4-165 applies to persons who have been determined eligible for services from the NJ Division of Developmental Disabilities and may be in need of limited or general guardianship of the person and/or property

PROTECTIVE SERVICES AND VULNERABLE ADULTS STATUTE

N.J.S. 52:27d-407 applies to the work of Adult Protective Services. Assessment of the need for guardianship and other legal actions may also be considered.

ADVANCE DIRECTIVE FOR PERSONS WITH MENTAL ILLNESS STATUTE

N.J.S. 26:2H-102 This statute affords a patient the opportunity to specify preferences for mental health services. See NJDMHS for forms at www.state.nj.us/human_services/dmhs/advance

SPECIAL EDUCATION STATUTE

N.J.A.C. 6A:14-3.7(D)12 requires that the student and parents be informed of transfer of rights before the student reaches age 18 and prepares to leave school.

PROFESSIONAL REFERRALS

NJ Psychological Association

973-243-9800 www.psychologynj.org

GANJI Professionals Listing

1-877-GUARDNJ www.ganji.org

NJ Bar Association, Elder and Disability Law Section

732-249-5000 www.njsba.com