Best Practices in Decision Making

Guardianship Standards of Practice
Applying NGA Standards of Practice

- NGA STANDARD 6: INFORMED CONSENT
- NGA STANDARD 7: STANDARDS FOR DECISION MAKING: Substituted Judgement and Best Interest
- NGA STANDARD 8: LEAST RESTRICTIVE ALTERNATIVE
National Practice Standards

- NGA began in 1988 – to advance standard of excellence in guardianship
- 1991 Code of Ethics developed to guide guardians in decision-making process— the foundation for the standards
- 7 Standards of Practice 1991; expanded to 23 between 1998 and 2000
- 1994-1996 training and education curriculum and certification exam developed
- 1996 First training session and exam in Detroit, Michigan
- Currently 25 Standards of Practice for Guardians and Conservators
- Over 1000 certified guardians nationally (NCGs and NMGs)
INFORMED CONSENT

• In ancient Greece patient participation in decision making was considered undesirable (paternalistic approach)

• 18\textsuperscript{th} /19\textsuperscript{th} centuries concept of assault and battery arose and led to idea that surgeon must receive consent from a patient

• 20\textsuperscript{th} century various legal decisions led to a more patient centered concept

• Became a vital part of patients’ rights in 1970s

• Based on the ethical principle of RESPECTING AUTONOMY
NGA STANDARD 6: INFORMED CONSENT

Decisions guardian makes on behalf of the person shall be based on the principle of Informed Consent:

• Guardian stands in the place of the person and is entitled to the same information and freedom of choice as the person would have received if not under guardianship

• An individual’s agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently

• Based on adequate information on the issue, voluntary action, and lack of coercion
NGA Standard 6: Informed Consent

The guardian shall do the following:

- Have a clear understanding of the issue for which informed consent is being sought
- Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative
- Maximize the participation of the person in making the decision
- Obtain a second medical or professional opinion, if necessary
Can a Protected Person exercise Informed Consent?

- If the Protected Person can understand and explain the options, their implications, and give a rational reason why they would decide on a particular option instead of the others

- If not, the guardian should stand in the place of the person
NGA standard 7: Standards for Decision Making

- Use Informed Consent to ensure all decisions are informed decisions
- Identify and advocate for the person’s goals, needs, and preferences
- Ask the person what he or she wants
- Do everything possible to help the person express his or her goals, needs, and preferences
- The guardian shall seek input from others regarding what the person would have wanted only when the person cannot express even with assistance
- The guardian may make a decision in the person’s best interest only when the person’s likely decision is unknown
NGA Standard 7: Substituted Judgement

• Substituted Judgement substitutes the decision the person would have made when they had capacity, what he/she would have chosen for themselves

• 1960s and 1970s, court decisions involving medical treatment of adults who had lost the ability to make their own decisions, the courts recognized that their decisions should be based on the patient's wishes, not based on how the courts or others wanted the patient to be treated

• Systematic review of published studies showed surrogates incorrectly predicted patients’ end of life treatment preferences in 1/3 of cases
NGA Standard 7: Best Interest

- Used only when the person has never had capacity, when goals and preferences cannot be ascertained, or when following the person’s wishes would cause substantial harm to the person.

- Requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.

- Requires the guardian to consider past practice and evaluate reliable evidence of likely choices.
NGA Standard 7: Best Interest

- Consider what choice a reasonable person in similar circumstances would make
- Seek insight from all available sources
NGA Standard 8: Least Restrictive Alternative

• Carefully evaluate available alternatives and choose one that best meets the goals, needs, and preferences of the person while placing the least restrictions on her freedom, rights, and ability to control her environment.

• Weigh the risks and benefits and develop a balance between maximizing independence and maintaining protection and safety.

• Make individualized decisions; the LRA for one person may not be the LRA for another.