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The Authority of a Guardian to Commit an Adult Ward

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Feature

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Placement in a mental health facility may be made through either a voluntary or involuntary commitment. Involuntary commitment usually requires a number of protective safeguards, including a court hearing, the appointment of counsel, and the meeting of a statutory criterion such as danger to self or others. Voluntary commitment is much more informal, with a written application and clinical assessment being all that is normally required. Most voluntary commitments are made upon application of a patient who has the ability to give informed consent. But in a substantial number of states an individual also may be committed by his or her guardian, in some cases with little or no court oversight.

As indicated by the attached charts, 10 states and Washington, D.C. specifically prohibit commitment by guardians,[2] while 20 states have statutory provisions that allow the practice.[3] The remaining states have not addressed the issue,[4] but it is doubtful that in the absence of such legislation that the authority to commit would be found.

Guardians typically are granted broad authority over the care and custody of their wards. Among a guardian's powers is the right to make health-care decisions. This right extends to decisions concerning psychiatric care, and arguably extends to commitment. But modern courts have held that in the absence of an express statute, a guardian does not have a right to control the ward's commitment. Rather, the procedures prescribed by the mental health code are held to be exclusive.[5] The principal motivator behind these decisions has been protection of the ward from possible abuse. It has been stated, for example, that allowing guardians to commit their wards would result in involuntary incarceration.[6] It has also been stated that allowing guardians to bypass the regular commitment procedures would result in a denial of those very rights that the commitment statutes were designed to protect.[7]

Only a few of the statutes authorizing commitment by guardians reflect the careful balance between the deprivation of liberty, the prevention from harm, and the need for treatment upon which the regular commitment statutes have been built. Rather, several of them harken back to the days when commitments were made solely on someone's say-so. It would be best if many of these statutes were repealed.

Of most concern are the statutes that grant a guardian open-ended authority to commit without prior court approval, a description that fits the statutes in Georgia and Ohio, with Idaho being only one step removed. In Idaho, the sole protective device is a requirement that a designated examiner concur in the guardian's decision.

However, prior court approval may be of little benefit if no standard is prescribed to guide the court's decision. This scenario describes the statutes in Arkansas, Mississippi, and South Dakota. But Arkansas at least requires notice, and Mississippi provides that the guardian may not commit unless the director of the facility determines that the ward will benefit from treatment.

Other states place more significant limitations on the guardian. In Minnesota and North Dakota the limitation is one of time. Both states authorize a guardian to make a temporary commitment, 90 days in the case of Minnesota, 45 days in the case of North Dakota. For a longer-term commitment, a guardian must utilize the involuntary commitment procedures.

Colorado, Connecticut, and Montana allow the guardian to commit only if the ward agrees. Montana clarifies that the ward also must be able to give informed consent, and Connecticut requires that the ward's ability to give informed consent be certified by an independent psychiatrist. Maine, less desirably, provides for non-protested admission. In other words, the guardian may commit unless the ward objects.

Missouri imposes a standard—the court must determine that the ward is in need of care and that commitment is in the ward's best interests—but little in the way of procedural protection. The requirements of a hearing and appointment of counsel were repealed in 1985, and the court may now make the decision based solely on the guardian's application. Missouri does require, however, that the application be accompanied by a physician's statement listing the factual basis for admission, including the current diagnosis, plan of care, treatment or habilitation, and the probable duration of the admission.

Florida, Massachusetts, and New Hampshire also require that the commitment be in the ward's best interests, which is a traditional guardianship standard but a vague guide for the courts, at least in this context. But all three states provide significant protections, including the provision of counsel. Massachusetts requires the ward's attendance. Florida requires independent evaluations of the ward's condition and an interview of the ward by the

court. New Hampshire adds that the requested placement must be the least restrictive available alternative.

Kansas imposes the most rigorous protections. Counsel is required and the ward must attend the hearing. Just as significantly, it prescribes a more appropriate standard: that the court supervising the guardianship be satisfied that the ward meets the criterion for an involuntary commitment under its mental health code.

California falls into a special category. Commitments by probate conservators are prohibited. Commitments are authorized only by conservators appointed for gravely disabled wards under the Lanterman-Petris-Short Act, 7A Cal. Welf. & Inst. Code §5350 *et seq.*, a detailed mental health statute that also covers involuntary commitment. Arizona similarly allows commitments only by guardians appointed under its mental health code.

Despite the ease with which guardians may commit under many of these statutes, there has been relatively little litigation concerning their constitutionality. The Massachusetts supreme court has held, however, that if the ward objects there must be proof beyond a reasonable doubt that serious harm would result if the commitment is not made.[8] It has also been held that the consent of the guardian is not necessary in order for the ward to request a discharge.[9]

Endnotes

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2. Alaska, District of Columbia, Illinois, Maryland, New York, Oklahoma, Pennsylvania, Texas, Vermont, Washington, Wisconsin.

3. Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, South Dakota, Wyoming.

4. Alabama, Delaware, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Michigan, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, West Virginia.

5. *In re Gardner*, 459 N.E.2d 17 (Ill. App. Ct. 1984); *In re Detzel*, N.Y.S.2d 6 (App. Div. 1987); *In re Limited Guardianship of Anderson*, 564 P.2d 1190 (Wash. Ct. App. 1977); *State ex rel. Watts v. Combined Community Services Bd.*, 362 N.W.2d 104 (Wis. 1985).

6. *Limited Guardianship of Anderson*, 564 P.2d at 1192.

7. *Gardner*, 459 N.E. 2d at 20.

8. *Doe v. Doe*, 385 N.E.2d 995 (Mass. 1979).

9. *Von Luce v. Rankin*, 588 S.W.2d 445 (Ark. 1979); *Lippmann v. Johnson*, 429 N.E.2d 167 (Ohio Ct. App. 1980).

STATES PROHIBITING COMMITMENT BY GUARDIANS	
ALASKA	Guardian may not place ward in a mental health facility or institution other than through formal commitment proceeding. Alaska Stat. §13.26.150(e)(1).
DISTRICT OF COLUMBIA	Guardian may not consent to involuntary or voluntary civil commitment of ward. D.C. Code Ann. §21-2047(c)(4).
ILLINOIS	Guardian without authority to make voluntary commitment. Procedures in mental health code are exclusive. *In re Gardner,* 459 N.E.2d 17 (Ill. App. Ct. 1984).
MARYLAND	Guardian without authority to make a voluntary commitment. Md. Est. & Trusts Code Ann. §13-708(b)(2).
NEW YORK	Guardian may not consent to voluntary formal or informal admission of ward to mental hygiene facility. N.Y. Mental Hyg. Law §81.22(b)(1).
OKLAHOMA	Guardian without authority to consent to placement except through formal commitment proceedings. Okla. Stat. Ann. tit. 30, §3-119(5).
PENNSYLVANIA	Court without power to grant guardian authority to admit ward to an inpatient psychiatric facility. 20 Pa. Cons. Stat. Ann §5521(f)(1).
TEXAS	Guardian without authority to make a voluntary admission of incapacitated person to a mental health facility except in the case of an emergency. Tex. Prob. Code Ann. §770.
VERMONT	Provides that nothing in guardianship chapter gives guardian authority to place ward in a state school or hospital except through involuntary commitment proceeding. Vt. Stat. Ann. tit. 14, §3074.
WASHINGTON	Guardian without authority to make voluntary commitment. Procedures in mental health code are exclusive. *In re Limited Guardianship of Anderson,* 564 P.2d 1190 (Wash. Ct. App. 1977).
WISCONSIN	Guardian has power to apply for involuntary but not voluntary commitment of ward. Wis. Stat. Ann. §880.38(1).
STATES AUTHORIZING COMMITMENT BY GUARDIANS	
ARIZONA	Guardian for gravely disabled ward appointed under mental health code may be granted authority to place and replace ward in facility without further order of court. Ariz. Rev. Stat. §36-547.04.
ARKANSAS	Court, upon petition and after such notice as court directs, may authorize or direct guardian to take appropriate action for commitment of ward to state hospital or other suitable institution. Ark. Code Ann. §28-65-303.
CALIFORNIA	Voluntary admissions authorized only by conservators of gravely disabled wards appointed under Lanterman-Petris-Short Act. Cal. Welf. & Inst. Code §§6000, 6002, 6004, 6008.
COLORADO	Guardian may consent to admission of ward to hospital or institution for care and treatment of mental illness but only if ward agrees. Guardian must notify court of admission within 10 days. Colo. Rev. Stat. Ann. §27-10-103(1).
CONNECTICUT	Conservator of person may make voluntary admission. Facility must notify court of admission within five business days and court must appoint psychiatrist to determine whether patient gave informed consent. Conn. Gen. Stat. §17a-506.

FLORIDA	Court may grant guardian authority to commit but only following several procedural hurdles. Ward must be represented by independent counsel, must be interviewed by court, independent medical, psychological, and social evaluations must be submitted, and there must be clear and convincing evidence that ward lacks capacity to make own decision and that requested authority is in ward's best interests. Fla. Stat. Ann. §§744.3215(4), 744.3725.
GEORGIA	Guardian may make voluntary commitment of ward. Ga. Code Ann. §37-3-20.
IDAHO	Guardian may make voluntary commitment upon concurrence of designated examiner. Idaho Code §66-318(a)(5).
KANSAS	Court may authorize guardian to place ward in treatment facility following finding that criterion for involuntary commitment are met. Counsel must be appointed for ward and ward's presence at hearing is required. Kan. Stat. Ann. §59-3018a.
MAINE	Guardian may admit ward on an informal voluntary basis if ward does not object to the admission. Me. Rev. Stat. Ann. tit. 34-B, §3831.
MASSACHUSETTS	Court may authorize guardian to commit if in ward's best interests. Ward must be present at hearing and counsel must be appointed if ward is indigent. Mass. Ann. Laws ch. 201, §6. If ward objects, it must also be proven beyond a reasonable doubt that serious harm would result if the commitment is not made. *Doe v. Doe,* 385 N.E. 2d 995 (Mass. 1979).
MINNESOTA	Ward or conservatee may not be committed for more than 90 days without a regular commitment hearing. Minn. Stat. Ann. §525.56(3).
MISSOURI	Court may authorize guardian to admit ward to mental health facility if ward is in need of care and commitment is in ward's best interests. Application must be accompanied by physician's statement listing the factual basis for the admission, including the current diagnosis, plan of care, treatment or habilitation, and probable duration of the admission. Mo. Ann. Stat. §475.121.
MONTANA	Guardian must follow regular commitment procedures unless ward is able to give informed consent and has agreed to the treatment or evaluation. Mont. Code Ann. §§72-5-321.
NEW HAMPSHIRE	Prior court approval required for more than temporary placement. Counsel must be provided for ward and ward must be given statement of rights. If hearing requested, guardian must prove beyond a reasonable doubt that placement is in ward's best interest and is the least restrictive available alternative. N.H. Rev. Stat. §464-A:25.
NORTH DAKOTA	Guardian may not admit ward to a mental health facility for more than 45 days without a mental health commitment proceeding or other court order. N.D. Cent. Code §30.1-28-12.
OHIO	Guardian may make application for voluntary commitment of ward. Ohio Rev. Code Ann. §5122.02.
SOUTH DAKOTA	Guardian may make voluntary commitment if authorized by court. S.D. Codified Laws Ann. §27A-8-18.
WYOMING	Guardian may make application for voluntary commitment of incompetent person if the application is accompanied by a statement of a professional examiner that the person is mentally ill and an examiner at the hospital, based on personal interview, confirms the diagnosis. Wyo. Stat. §25-10-106.