

State of Washington
**Certified Professional Guardianship
and Conservatorship Board**

Presentation by
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As you heard from Tina Baldwin, director of the Mental Health Project of Spectrum Institute, the delay or denial of mental health services to adults with developmental disabilities can have serious negative consequences. Many of those consequences were identified in a report we sent to this board. In doing so, we wanted to underscore that adults under a guardian's care are harmed when they do not receive necessary mental health therapy in an appropriate and timely manner.

The report uses the term "gatekeepers" to describe the people who decide whether and when adults with developmental disabilities will receive mental health services. Because adults with developmental disabilities who are living under an order of guardianship have lost the right to make their own medical decisions, they are totally dependent on their guardians to arrange for mental health care for them. Their guardians are the "gatekeepers" to these services. The gate remains locked, and mental health therapy is unavailable, unless a guardian decides otherwise.

This part of our presentation focuses on legal issues that guardians should consider in connection with their role as a protector. They should be aware of issues that are implicated if they delay or deny mental health care to a protected person.

To guide the board through these issues, I will be referring to the June 1 letter and the attachments that were sent to board members and the Supreme Court by Spectrum Institute. The attachments were hyperlinked so the reader could access them online.

The first attachment was the [Consequences Report](#). As Tina Baldwin mentioned, we encourage the board to use the report as it adopts rules to ensure that guardians secure timely and appropriate mental health services for protected persons.

➡ In the letter, we recommended that the board develop standards of practice which safeguard the [rights](#) of protected persons. The word rights is hyperlinked to a declaration of Legal Principles that are associated with the right of protected persons to prompt and appropriate mental health services when they are needed. That document cites federal and state constitutional and statutory provisions as well as relevant case law. These are key points from the declaration of Legal Principles:

- The constitutional right to make medical decisions is infringed when a judge transfers medical decision-making authority from an adult to a guardian. As a result, due process requires the court, through the guardian, to exercise medical decision-making in a responsible manner.
- Adults with developmental disabilities have the right to equal access to health care services. (Wash. Rev. Statutes [71A-10.030](#) declares that “The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.”) I am unaware of any law that permits deficient medical services for this vulnerable population. As the “gatekeeper” to such services, a guardian must be pro-active in knowing when mental health care is needed and take steps to secure it promptly. Delay can have serious negative consequences to a protected person.
- Failure to secure prompt and appropriate mental health care may constitute “dependent adult neglect” and trigger an investigation by adult protective services. (Wash. Rev. Statutes [74.34.020\(16\)](#) defines “neglect” as a pattern of inaction by a person with a duty of care that fails to provide services to maintain the mental health of a vulnerable adult.
- The Americans with Disabilities Act (and [RCW 49.60.030](#)) may be violated if a guardian negligently deprives a protected person of prompt and appropriate mental health services. It is the duty of the State of Washington, as part of an ongoing judicial proceeding, to ensure meaningful access to the services that are provided or coordinated by a guardian. As gatekeepers to mental health services, both courts and court-appointed guardians have duties under Title II of the ADA.

➡ In the letter, we asked the board to develop rules of practice that conform to the standards that have been adopted by the National Guardianship Association.

- [NGA Standard 14](#) - **Decision-Making About Medical Treatment:**

Requires that a guardian be **pro-active**. “[T]he guardian shall . . . **monitor** . . . the health and well-being of the person under guardianship.”

Requires that a guardian act **competently**. “[T]he guardian shall ensure that all medical care for the person is **appropriately** provided . . .”

➡ The letter emphasized that guardians, and the courts that appoint them, should meet their [obligations](#) under Title II of the ADA. Although the United States Department of Justice has not yet issued an ADA guidance memo for guardianship courts and guardians, such guidance can be gleaned from a criminal justice system memo. Just change the words “criminal justice system” with “adult guardianship system” and you have examples of what judges and guardians should be doing to ensure compliance with the ADA. A specific guidance memo from the DOJ on adult guardianship proceedings may be issued in the near future in response to a congressional mandate. We will alert you when we learn of a release date.

(Please Note: Duties under the ADA are triggered when a disability is [known or obvious](#). A request is not required. All persons who are under an order of guardianship are protected by the ADA since their disabilities have been adjudicated and they are therefore “known.” Because General Rule 33 and information on the Washington Courts website suggest that requests are required for ADA rights and duties to be triggered, the rule and those materials are misleading and therefore out of compliance with federal law. This should be addressed by the judicial branch.)

➡ Finally, our letter called attention to the board’s mandate under [General Rule 23](#) to adopt and implement policies or regulations setting forth minimum standards of practice for professional guardians. We trust that the Consequences Report, this presentation, and the reference materials we have provided to the board will assist the board, and the Supreme Court to which the board is responsible, in providing guidance to assist guardians in securing prompt and appropriate mental health services for protected persons, and a grievance procedure for noncompliance.

In the future, we are willing to assist the board as it addresses these issues more thoroughly. Please let us know how we may help. We are now open to any questions.



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<https://disabilityandguardianship.org/guardianship-board-presentation-2.pdf>