

## General Information about Guardianship

A guardianship is a legal process that allows one person or entity to make decisions for another (the *ward*). The court system is tasked with establishing guardianships, and they typically appoint guardians in instances of incapacity or disability. Incapacity is defined as the physical or mental inability to do something or to manage one's affairs. Incapacity can involve severe and long-term conditions that impose great limitations upon an individual's ability to take care of themselves, express themselves verbally, earn a living, and live independently. Here at Shepherd Center, a neuropsychologist and/or medical doctor will determine a patient's capacity.

Going through the legal guardianship process is only required if the patient in question does not already have other legal documents completed. If they have both an "advance health care directive" (i.e. living will) and a "durable power of attorney for finances," guardianship may not be required. Guardianship should be considered as a last resort that is only required if all other legal options have been exhausted. If you have these legal documents, please share them with your Case Manager.

### Types of guardianship

- Emergency or Temporary guardianship – may be needed for consent for medical treatment, a court hearing is usually not required. Temporary guardianship can be considered when a patient's cognition may improve over time.
- Permanent Guardianship- decided by a court and is a legal document that all parties must acknowledge. A court hearing is usually required and it can be a lengthy and expensive process. A lawyer is recommended to help with this process. A permanent guardianship can be reversed if a person regains capacity and it can be proven in court.
- Joint Guardianship (a form of permanent guardianship)- more than one person or entity may share the responsibilities.

**Guardian's Powers include:** assuring the availability and maintenance of care for the ward and possibly making ALL financial and medical decisions for the ward.

### File a petition for guardianship

The state and county in which the patient (for whom guardianship is being sought) lives is the usual authority over granting guardianship requests. Each state has slightly different procedures for granting guardianship that you must understand. It is recommended that you use a lawyer to help guide you through the process.

### How Is a Guardian Chosen?

The court will usually decide based upon pre-incapacity circumstances of the ward or documents such as an existing durable power of attorney or will. If there are no documents, the courts typically (but not always) prefer to appoint a spouse, parents, adult children, brothers, sisters, or other family members.

Shepherd Center recommends you consult an attorney who knows your state and county laws.

## General Information about Power of Attorney

A power of attorney (POA), in general, is a legal document signed by the ward that appoints one or more people (or institution) with the power to make decisions regarding the ward's affairs. This power can include financial and medical decisions. After a severe injury, many patients will not have the capacity to sign or consent to legal documents. If you have a POA or other legal documents already, please share them with your Case Manager.

### Granting POA involves a person who:

- is fully oriented
- demonstrates understanding of what a POA is
- reliably identifies the qualities of someone who could serve as a POA and
- understands the nature of their injury and what decisions may need to be made on their behalf.

Here at Shepherd Center, a neuropsychologist and/or medical doctor will determine a patient's ability to execute and/or revoke a POA. Also, a POA can be tailored to grant only certain limited powers.

**Positives:** inexpensive; revocable; patient may retain ability to manage some of their affairs when able to do so.

**Negatives:** some financial institutions may not honor a POA; agents may abuse their power

**Pursue legal guardianship if you cannot obtain power of attorney.** If the patient is already mentally incapacitated and did not execute a power of attorney or a living will or other POA paperwork, it may be necessary to apply for guardianship. Any interested party, including the proposed ward, may challenge the guardianship petition. Additional information about guardianships and POAs can be found at the websites listed below or through your state and county's probate court.

Shepherd Center recommends you consult an attorney who knows your state and county laws.

For more detailed (but still general) information visit wikiHow on the web:

Power of Attorney: <https://www.wikihow.com/Get-Power-of-Attorney>

Guardianship: [www.wikihow.com/Arrange-for-Guardianship-of-an-Impaired-Adult](http://www.wikihow.com/Arrange-for-Guardianship-of-an-Impaired-Adult)

Information about guardianship in Georgia: [gaprobate.gov/sites/default/files/probate/HANDBOOK\\_FOR\\_GUARDIANS.pdf](http://gaprobate.gov/sites/default/files/probate/HANDBOOK_FOR_GUARDIANS.pdf)