

PROFESSIONAL GUARDIANS-WHAT WE DO AND WHY

- ❑ Much of what professional guardians do is similar to family guardians only with more clients as all guardians must follow NRS Chapter 159.
- ❑ The public and private agencies also do the same work with some differences with individual County requirements and policy and due to NRS Chapter 253 which applies to Public Guardians.

WHY DO PROFESSIONAL GUARDIANS AND GUARDIAN CASE MANAGERS DO THIS WORK?

- ▣ Guardians can make a real difference:
- ▣ Guardians can save lives by being able to intervene and get the medical help needed for persons who have been neglectful of themselves or neglected by others.
- ▣ Guardians can save estates from foreclosures, scams, and exploitation.
- ▣ In most cases the ward's quality of life is greatly increased or the chances of a dignified death are improved due to a guardian's involvement.
- ▣ Guardians can assist in finding family who may have lost contact.
- ▣ There are not many professions that have the ability to affect a person for the good as guardians can and that is why professional guardians do this work.

BUT.....

- ▣ Guardianship work is not for the faint of heart.
- ▣ The rewards have to be internalized as much of what guardians do is not in the public eye due to confidentiality issues - it is difficult to explain actions to those who do not understand what guardians are doing as guardians are bound by privacy laws.
- ▣ Many of the parties guardians serve are not aware of what is being done for them so they cannot appreciate the assistance they are receiving.
- ▣ Guardianship work is 24 hours a day every day.
- ▣ The responsibility of having to deal with every aspect of several persons' lives can be quite taxing physically and emotionally and is very stressful.
- ▣ Guardians have to make at times very serious decisions regarding those they serve which can put a tremendous amount of pressure on the guardian.

- ▣ There are certainly hazards as well.
- ▣ When you take away the money or home from an exploiter, they can become quite angry and sometimes threatening.
- ▣ We deal with frightened and confused wards that are going through a traumatic experience without the cognitive ability to understand what is happening to them which can present many challenges .
- ▣ While going into homes to search for items and to do inventories, guardians are subjected to biohazard situations, hoarding disasters, dangerous or dead animals, physical hazards such as unstable flooring, unimaginable smells, and other unpleasant circumstances .

- ▣ Due to the memory loss or other mental health issues wards may be experiencing, it is very important that a guardian validates with others that what a ward is expressing is accurate especially if they are reporting negative events. Otherwise, caregivers, family members, and others, including guardians, can be implicated in events that may not have even happened with possible dire consequences.
- ▣ Guardians deal with family dissension where no matter what is done, no one is able to agree to anything except to blame the guardian.
- ▣ Still others do not comprehend the reasons guardians do what guardians do for the wards and become upset at decisions guardians make and try to adversely affect the guardianship process.

WHAT DO WE DO AS PROFESSIONAL GUARDIANS?

Referrals:

- ❑ Referrals can come from anywhere in the community.
- ❑ For private guardians, the referral can include infants, children, and adults from anywhere in the state.
- ❑ County agencies may have restrictions on what age group they will take referrals on.
- ❑ County agencies also deal with only those who reside or have property in their county.
- ❑ The majority of referrals for all professional guardians are for the aged who are suffering from some type of dementia or other medical issues.
- ❑ But other referrals include the mentally ill; Traumatic Brain Injuries, intellectually and physically disabled, and minors with financial circumstances that require a guardian.

Investigations:

- ❑ Referrals start the investigation.
- ❑ All investigations include interviews to try to get as much information as possible from the proposed ward, family, neighbors, friends, medical personnel and others regarding the circumstances that started the discussion about needing a guardianship.
- ❑ *Due to the restrictive nature of guardianships to the ward, guardianships should always be the last resort in dealing with a person's crisis.*
- ❑ Investigations are needed to look into other alternatives to guardianship including looking into possible estate plans.
- ❑ *Prof. guardians also need to look at alternatives to their appointment due to the cost to the taxpayer or proposed ward's estate.*

Why Not Family?

- ▣ One issue that many people do not understand is why professional guardians are brought into a case when there is family.
- ▣ Many times the families are concerned about taking on the role of the guardian because it changes the dynamics in the family and causes resentment and misunderstanding by their loved ones.
- ▣ Some families feel they are just too far away to be an effective decision maker and want someone closer to take that role.
- ▣ Sometimes the families are the problem and a third party needs to be brought in to intervene.
- ▣ Throughout the investigation finding family is imperative. Not only do we need to find out where the family stands in relationship to the proposed ward and guardianship, but also to make sure we find family for notification purposes.

Privacy and HIPAA

- ▣ The proposed ward's privacy is an issue we deal with all the time and starts with the referral.
- ▣ Although the person is not deemed incompetent until a guardianship is granted, we have to be careful that we do not overstep our boundaries in obtaining the information we need when the proposed ward is compromised.
- ▣ Proposed guardians who are given a referral and then investigate can fall under the HIPAA Privacy Rule for Permitted Uses and Disclosures
- ▣ "Serious Threat to Health or Safety": "Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat.)"

Next Step:

- ❑ A question that needs answering is how emergent is the situation and is a temporary guardianship vs. a general guardianship necessary.
- ❑ It is important in either proposal, we meet the requirement of explaining per statutory language how and why the proposed ward is:
In a substantial and immediate risk of physical harm or has an immediate need for medical attention, both of which the person is unable to respond to, and/or may present a danger to himself or others or is being subjected to abuse, neglect or exploitation.
- ❑ In meeting that statutory language, an investigation is also about finding the appropriate documentation to clarify the need for the guardianship as required by law.
- ❑ Once all the information is obtained, the guardian will find an attorney to assist with the guardianship process, give the attorney all the information obtained and proceed with the guardianship action.

DUTIES OF A GUARDIAN

Guardians work in 4 areas:

- ❑ the person;
- ❑ finances;
- ❑ property; and
- ❑ legal requirements

PERSON

Duties include but are not limited to:

- ▣ Monitor and manage the mental, physical and social well-being of the ward on a continuous basis including overseeing care providers, placement agencies, medical personnel and making sure all medical needs are being maintained as needed
- ▣ Be available at all times to authorize procedures, medication changes, admits, discharges or any other issues where authorization/consent is needed
- ▣ Be available at all times to be notified of emergency issues or other issues affecting the ward
- ▣ Be available at all times to make decisions regarding the well-being of the ward
- ▣ Review contracts, releases, and other documents needing guardian's signature
- ▣ Provide the least restrictive environment as possible while maintaining the measures needed to keep the ward safe within the ward's financial capability
- ▣ Maintain a quality of life that the ward's physical health, mental health, and finances will allow

Person cont.

- ▣ Safeguard the ward's dignity and privacy as much as possible
- ▣ Protect the ward from abuse, neglect, or harm
- ▣ Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings
- ▣ Advocate for the ward's needs whenever needed
- ▣ Review all mail with personal mail going to the ward if appropriate and financial bills going to the guardian of the estate or financial representative
- ▣ Maintain a log of events, interventions, daily activities, and health issues if possible
- ▣ Develop a plan for end of life issues by discussing issues beforehand with ward and family if appropriate and reviewing estate planning documents

FINANCES

Duties include but are not limited to:

- ❑ Investigate the finances of the ward in order to marshal all assets
- ❑ Secure, freeze, close, move, and retitle accounts as appropriate
- ❑ Maintain all accounts in guardianship accounts separate from guardian's personal accounts
- ❑ Notify creditors as to why a debt cannot be paid if there are not funds of the ward to pay the debt Protect the ward from exploitation or other illegal activities against the ward's estate
- ❑ Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings
- ❑ Make financial decisions regarding the care and needs of the ward based on the financial capability of the ward
- ❑ Pay bills
- ❑ Maintain trust accounts as needed in facilities for the ward's personal needs
- ❑ Maintain budget and anticipate ward's financial needs within that budget
- ❑ Monitor investments

Finances cont.

- ❑ Prepare information for taxes and make sure taxes are prepared and filed
- ❑ Review all mail with personal mail going to the ward if appropriate
- ❑ Review contracts and other financial representative documents before signature
- ❑ Complete applications and follow through for entitlements and benefits such as Medicaid, Medicare, other medical insurance, VA Aids and Attendance, Social Security, SSI, and disability
- ❑ Maintain a daily accounting of all income and expenditures, keeping all receipts if possible
- ❑ Develop a plan for end of life issues such as paying for a preneed by discussing issues beforehand with the ward and family if appropriate and reviewing estate planning documents
- ❑ Maintain a log explaining unusual and/or large expenditures

PROPERTY

Duties include but are not limited to the following with court approval where necessary:

- ❑ Secure and maintain all real and personal property as soon as possible
- ❑ Search residence for valuables, important documents, and money
- ❑ Inventory and document personal property
- ❑ Appraise real and personal property as appropriate
- ❑ Sell or rent real property and personal property such as a mobile home as appropriate
- ❑ Store, sell, donate, and/or dispose of personal property as appropriate
- ❑ Continue to secure and maintain real and personal property throughout guardianship if kept within the possession of the ward
- ❑ Install and maintain any safety equipment as necessary for the ward in the ward's residence
- ❑ Keep all receipts and maintain a record and explaining where all personal properties are or where the property went if no longer in the possession of the guardianship

LEGAL

Duties include but are not limited to:

- ❑ Yearly accountings of person and estate-accountings in the estate requires a court hearing; the accounting of the person has a filing requirement only
- ❑ Inventory and Record of Value filed within 60 days of appointment
- ❑ Court appearances to sell real property, to approve investments, to move a Ward out of state, to change estate plans, and other issues as enumerated in NRS 159

DEATH AND DYING

Two of the most important issues we deal with as prof. guardians are the dying process and death of almost all of our clients.

Each person has their own journey during the declining process and death is of course the final step.

Dying

- ▣ Part of our duty and responsibility as guardians is to make the death process as dignified and painless as possible.
- ▣ It is important that guardians advocate for the needs and wishes of their clients many of whom can no longer speak for themselves.
- ▣ The guardian deals with the families' grief process as well and need to make sure they are included if they desire to do so and are appropriate to do so.
- ▣ The guardians and sometimes with families, are the ones to decide whether or not to have that surgery to prolong life, or, to put in that feeding tube, or to say That is enough.

- ▣ Along with wishes stated in end of life documents if we have them, quality of life factors are many times the deciding factors in the decisions we make for the ward.
- ▣ For the most part, the guardians are the final decision makers.
- ▣ We deal with hospice agencies on a continuous basis; we work closely with doctors, nurses, and caregivers to make sure that the client is as comfortable as possible, and make sure the family is contacted and involved if appropriate to do so.
- ▣ We make sure to have the living wills and durable power of attorney for health care available to all appropriate medical personnel and are now in the process of dealing with the POLST forms for all clients (POLST stands for Physician Order for Life Sustaining Treatment).

Death

- ▣ Guardians try to prepare for the death of the ward by working on finding out what the person's wishes are beforehand.
- ▣ These wishes are for issues such as cremation vs. burial, where they want to be interred, what is to be engraved on the grave stone or any other choices the person can make.
- ▣ It is important to validate those choices with family and friends who might have understood the person's wishes as well.
- ▣ It is also important to keep family involved in the decisions made to pay for services ahead of time because most prof. guardians do not get involved with the memorials, types of urns, coffins, obituaries, and such as that is believed to be the prevue of the ward and the family unless funds become a factor.

- ▣ When family is not available or appropriate, then the guardians will make those decisions based upon the information they can obtain and the finances that are available.
- ▣ At the time of death, we make sure the planned arrangements are followed through with and that the final wishes are carried out.
- ▣ We assist the family as much as they need or stay to the side while the family carries out their responsibilities.
- ▣ Death is the most common reason to terminate a guardianship.