

Onguard!

A REGULAR NEWSLETTER FOR PRIVATE GUARDIANS IN NSW

JUNE 2008

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Office of the
Public Guardian
Attorney General's
Department of Law

Lifestyle Matters! An Invitation to Better Guardianship

PRIVATE GUARDIAN NETWORKING DAY

The Inaugural Private Guardian Networking Day is booked in for Friday 24 October 2008 in Parramatta. The Private Guardian Support Unit has been busy planning to ensure that you will benefit from attending this day.

Why are we having a Networking Day for Private Guardians?

In October 2006 the PGSU conducted a survey of private guardians in NSW. Respondents to the survey expressed a desire to meet with other guardians to network and develop skills as guardians. The results of the survey also indicated that guardians wanted assistance to understand their role and responsibilities.

What will the day have in store for guardians?

The day aims to assist guardians to develop the knowledge and skills needed to make the best decisions possible for people under their guardianship. Based on the feedback that we have received from guardians some interesting topics have been organised, such as advocacy and negotiation skills, making a complaint, as well as indepth discussions on various guardianship functions. Guest speakers include presenters from the NSW Ombudsman, the Health Care Complaints Commission (HCCC), and the Aged Care Complaints Investigation Scheme (ACCIS).

The Networking Day is not just about listening to guest speakers; it is also about hearing from other experts in the field...YOU!

The day will provide an opportunity for you to interact and network with other guardians; people who are going through similar experiences as you. We need you there to share your expertise with the PGSU and other guardians. There will also be plenty of time for questions!

Who can attend the Networking Day?

The Networking Day is open to all private and enduring guardians. It is also open to your support networks, the people you rely on to help you in your decision making role.

Formal registrations will open in August, and between now and then you can expect more information about the day and the program from the PGSU.

Do you have any feedback?

If you would like to talk to us about the conference or if you think you can be part of the day in some way we would love to hear from you, please contact the PGSU on (02) 8688 6060 or 1800 451 510 or email informationsupport@opg.nsw.gov.au.

objections to medical & dental treatment

● ● ● ● ● ● ● the rights & responsibilities of guardians

Over 70% of the private guardians currently registered with the PGSU have a medical and dental consent function. Although the medical and dental consent function is one of the most common functions given to guardians, it can be one of the most difficult to understand, particularly when the person under guardianship is objecting to treatment.

Part 5 of the Guardianship Act states that a guardian can provide substitute consent in situations where the person under guardianship is unable to give his or her own consent. In most circumstances, this will be a process of consultation between the treating medical practitioner, the person under guardianship and the guardian.

Unfortunately, there are times when the person under guardianship may object to treatment which the doctor and the guardian think is going to be beneficial. For example:

- A person with dementia does not want to take tablets as they do not like to swallow them
- A person with an intellectual disability does not want to have a Fluvax injection as they are afraid of needles.

What if the person under guardianship objects to treatment?

If you are asked to provide consent to treatment and the person under your guardianship is objecting, you will need to ask the medical or dental practitioner to approach the Guardianship Tribunal to seek consent. The Tribunal can decide to make a *one-off* consent to the proposed treatment against the person's wishes. Alternatively the Tribunal can make an Order giving the guardian the ongoing authority to override the person's objections, this is commonly referred to as a '**section 46A authority**' because of the section of the Guardianship Act that is used to make the Order. If you have been given this authority, you will have a separate document to the main Guardianship Order. The Order will include the wording: ***"The Tribunal at the request of the guardian confers on the guardian the authority to override the objections of (name of person) to major or minor medical treatment being carried out on him/her"***.

The Tribunal may limit this authority to specific forms of treatment, for example dental treatment including fillings and removal of abscessed teeth. Or the Order may not be specific in which case your authority can apply to any form of minor or major medical or dental treatment.

What if the person does not understand the treatment?

Section 46(4) of the Guardianship Act provides for the objections of a person under guardianship to be disregarded if the person doesn't understand what the treatment entails, if the treatment will cause no distress or "reasonably tolerable and transitory" distress. Examples of this could be an antibiotic injection or stitches for a cut. These types of treatment are "once off" and not ongoing in nature. This means that you can give consent to treatment without the need to have an Order made overriding objections.

How can treatment be provided if a person objects?

Even if you have the authority to override the person's objections to medical or dental treatment, it can still be difficult for medical and health care providers to implement the treatment. For instance a person under guardianship needs to have intravenous medication in hospital but keeps pulling out the needle. If you are asked to provide consent to treatment against a person's wishes you may need to discuss a treatment plan with the medical or dental practitioner. Involving the person's primary carers (family, friends, nursing home staff or group home workers) in discussions is also a good idea. Once a plan for managing the person's objections to treatment has been developed, it is a good idea to make sure this is recorded on the person's file. The person's direct carers should also keep notes about how the plan is implemented, what works and doesn't work and any changes needed to manage the person's treatment.

Joe's story

Joe has an intellectual disability and lives in a group home, he needs to have some fillings done but he is very scared of the dentist. Joe will not sit still for an examination and becomes quite distressed. The dentist suggests booking Joe in for treatment under a general anaesthetic so Joe will be asleep while the fillings are done. The guardian contacts the Guardianship Tribunal and an Order is made allowing the guardian to override Joe's objections to treatment. The guardian consents to the treatment proposed by the dentist.

May's story

May has dementia and lives in a nursing home. Her GP has recommended that she has a Fluvax injection. May is afraid of needles and is not willing to have the injection. The GP discusses this with the guardian, and agrees that the injection can be given under Section 46(4) of the Guardianship Act. That is, although the guardian does not have an Order allowing them to override May's objections, the injection will only take a moment to give and will be "transitory" in nature. The GP organises for a nurse who has a good relationship with May to sit with her and reassure her while the injection is given.