



Question

When does the question regarding legal authority/support occur?




Mental Health Code

For persons with developmental disabilities, guardianship and alternatives to guardianship are dictated by Chapter 6 of the Michigan Mental Health Code (MCL 330.1600 through MCL 330.1644)



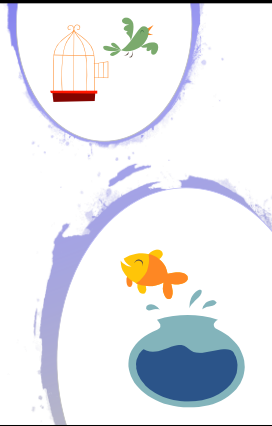
Estates and Protected Individuals Code

For persons with persistent and severe mental illness and persons of age, the Estates and Protected Individuals Code dictates guardianship and the alternatives.



Least Restrictive

Regardless whether one uses an EPIC or MHC standard, both laws and subsequent case law support, require and recommend the use of the least restrictive legal designation.



Circle of Support



Poor Choices v. Inability to Chose

- Poor Choices ≠ incapacitated
- Right to make bad decisions

Communication

- Requires effective communication by all parties
- Non-traditional communication
 - All behavior is communication
 - Anything you can see, hear, touch or count is a behavior.
 - A person's behavior tells us what they think about other people, their lives and their work.

Elements of Informed Consent

CAPACITY

An "ability":

1. To understand the information provided;
2. form a reasonable judgment based on the potential consequences of a decision;
3. Varying degrees, fluctuating.



Competence

- A characteristic
- "Being Competent"
- All or nothing.



What is capacity? Incapacity?

A legal concept defined by law.

Determined by courts or attorneys.

Capacity is dynamic.

Assessed capacity can vary according to supports provided, for example, effective communication skills.

Involve others who know the person best.

ALWAYS presume capacity.

What is a power of attorney?

Document that allows you to give someone the authority to manage a person's affairs.

Person assigned to manage affairs is an agent.

Voluntary.

Can be changed.

Scope is defined by the document, i.e., legal, financial, medical, contractual, etc.

Outside of the court process.

Continued

Signed, witnessed by two individuals and notarized.

"Sound mind" as defined by MCLA 700.5506. Sound mind is not defined, but basic, average ability.

Consent is whether a person knows what right he has and that he wants someone else to have the ability to use that right.

Agent must sign an acknowledgment of responsibilities.

Scope

Durable power of attorney: remains in effect when you are unable to make your own decisions.

General power of attorney: can be effective immediately upon execution.

Springing power of attorney: can "spring" into action.

Special or limited power of attorney.

Agent


Someone you trust.

Can be a list of people, or more than one person at a time.

Must follow your instructions to the best of your ability.

Must act in your best interest.

Keep good records, whether they are financial, medical, etc.



Patient Advocate

Medical

End of life

Sources

National Resource Center for Supported Decision Making: <http://supporteddecisionmaking.org>

State Bar of Michigan: www.michbar.org/generalinfo/libraries/selfhelp.cfm

The Arc Michigan: <https://arcmi.org/>

Five Wishes: www.agingwithdignity.org/5wishes.html

Bazelon Center for Mental Health Law: www.bazelon.org

Estate and Protected Individuals Code, Public Act 386 of 1998, Section 700.5316, et. seq.

Michigan Mental Health Code, Public Act 258 of 1974, Chapter 6

We are here to support you!

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Michigan Alliance for Families

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