

# Guide to *Rogers* Guardianship



CARING FOR ADULTS IN NEED

## Introduction

Since the 1983 decision of *Rogers v. Commissioner of Department of Mental Health, 390 Mass 489 (1983)*, the Probate and Family Court has been charged with acting upon requests for permission to administer antipsychotic medication to individuals who are unable to consent to treatment themselves. A substituted judgment standard applies and, at a minimum, yearly reviews are required.

This booklet provides **information about *Rogers* guardianships, for adults, in Massachusetts**. This is a type of guardianship where the Court determines the Guardian will be given authority to agree to extraordinary treatment for the Incapacitated Person (I.P.). This usually refers to treatment with antipsychotic medication but it may include other intrusive treatments and procedures.

This booklet is intended to be a guide, and includes information regarding guardianship procedures, what forms to file, and duties of guardians.

This booklet is not intended as a substitute for legal advice. **You may want to consult with an attorney.** For information about finding an attorney, please see this website:

<http://www.mass.gov/courts/programs/legal-assistance/find-lawyer.html>

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## What is a *Rogers* Guardianship?

A guardian for an adult is a person appointed by a judge in the Probate and Family Court who is given responsibility to make decisions for an individual after a judge has decided s/he is not competent to make their own informed decisions. Some guardians can make decisions about treatment of a person with mental illness that is considered “extraordinary” medical treatment. These are called *Rogers* guardianships.

At a *Rogers* guardianship hearing, the Court is asked to authorize extraordinary medical treatment for an Incapacitated Person. This usually refers to treatment with antipsychotic medication, but it may include other intrusive treatments and procedures such as sterilization or electroconvulsive therapy.

If a person who has been determined to be incapacitated is prescribed antipsychotic medications, the Incapacitated Person will need a guardian who has been granted *Rogers* authority by the Court.

Before *Rogers* authority is granted, the Court must find that the person:

1. Is incapacitated and not competent to give informed consent with respect to being treated with antipsychotic medications and,
2. If incompetent, determine what the person would choose to do if he or she were competent, with regard to taking antipsychotic medication(s).

This is called a “substituted judgment” standard wherein the Court substitutes itself for the Incapacitated Person and attempts to determine what the person would decide for him

or herself if she or he were competent. The Court must consider the following when determining substituted judgment:

- preferences the person may have expressed previously regarding treatment with antipsychotic medications;
- the person's religious convictions;
- the impact of the decision on the person's family;
- the probability of adverse side effects; and,
- possible outcomes (prognosis) with and without treatment

*Rogers* guardianship cases are reviewed every year by the Court.

### Who is the Petitioner?

The person who files a petition in court is called the Petitioner.

The Petitioner may be a physician, a hospital, a facility, a state agency, a friend, a neighbor or a family member.

The Petitioner informs the Court about the person's condition and needs which is validated by the filing of a **Medical Certificate (MPC 400)** or **Clinical Team Report (MPC 402)**.

### Who is the Respondent?

The person the Petitioner thinks needs assistance is called the Respondent. With respect to a *Rogers* Guardianship the Respondent is an Incapacitated Person.

## What is the Legal Definition of an Incapacitated Person (I.P.)?

An Incapacitated Person (I.P.) is someone who is determined by the Court to have a clinically diagnosed condition that leaves them unable to make or communicate decisions affecting their physical health, safety, or self-care.



A person is not “incapacitated” just because they are elderly.

The Guardian appointed by the court for an I.P. will make some or all decisions for the I.P.

If the I.P. requires medical treatments or care that the court considers “extraordinary”, a guardian must obtain the Court's permission before authorizing the treatment.

### What are the Rights of the Respondent?

- 1.) **The right to an attorney.** When the Petition is filed, if the Respondent cannot afford a lawyer, the Court will appoint an attorney to represent her or him. The attorney will tell the Court what the person wants, not necessarily what is in his or her best interests.
- 2.) **The right to notice** that a petition for guardianship has been filed and the date, time, and place of the court hearing.
- 3.) **The right to be present** at the hearing unless there are significant reasons for not attending.

- 4.) **The right to object to the appointment** of a guardian and the right to present evidence and cross-examine witnesses.
- 5.) **The right to object as to who will be named guardian or monitor.**

### What is a *Rogers* Monitor?

When the Court grants the guardian *Rogers* authority, the Court also appoints a person who is called a *Rogers* Monitor to oversee that the I.P. is being medicated in accordance with the Court approved treatment plan.

The *Rogers* Monitor may be the person who was appointed as guardian or, it may be a different person.

The *Rogers* Monitor should immediately review the details of the **Appointment of *Rogers* Monitor (CJP 115)** form which describes the duties of the Monitor.

The *Rogers* Monitor and the guardian will review medical records, meet with staff and may attend case conferences if the I.P. is in a hospital or other facility.

The *Rogers* Monitor must report to the Court in writing on a regular basis. A report must be filed prior to the yearly review. Failure to file reports may result in removal of the Monitor.

### Becoming a *Rogers* Guardian

To become a *Rogers* Guardian, a petitioner files a **Petition for Appointment of Guardian for an Incapacitated Person (MPC 120)** and specifically requests the authority to administer antipsychotic medication or other “extraordinary” medical treatment.

### Procedure for filing a Petition to be appointed Guardian of an Adult

The procedure is described in detail on the Probate and Family Court website at:

<http://www.mass.gov/courts/selfhelp/guardians/>

The necessary forms are also available on our website.

<http://www.mass.gov/courts/selfhelp/guardians/guardian-ip-forms.html>

If you need assistance, you may contact the Registry of Probate for the Probate and Family Court in your county. In addition, assistance for qualified individuals may be available at these courthouses:

- |                     |  |
|---------------------|--|
| Suffolk Division-   | Court Service Center<br>Edward W. Brooke Courthouse<br>24 New Chardon Street<br>Boston, MA 02114                                       |
| Norfolk Division-   | Tuesdays from 9 a.m. until 2 p.m.<br>Norfolk Probate and Family Court 35<br>Shawmut Road – 1 <sup>st</sup> flr.<br>Canton, MA 02021    |
| Middlesex Division- | Thursdays from 9 a.m. until 1p.m.<br>Middlesex Probate and Family Court<br>208 Cambridge Street – 2nd flr.<br>East Cambridge, MA 02141 |
| Franklin Division-  | Court Service Center<br>Franklin Probate and Family Court<br>43 Hope St.<br>Greenfield, MA 01302                                       |

In other divisions of the Probate and Family Court, please see the Lawyer of the Day or the Court Service Center for assistance.

### **Where do I file a Guardianship Petition?**

A Guardianship Petition must be filed in the county where the Respondent resides OR where a will nominating a guardian could be probated OR in the county where an incapacitated person is admitted to a facility pursuant to a Court order.



To request court approval to treat the Respondent with antipsychotic medication, you must check the box at #14, “to treat Respondent with antipsychotic medication in accordance with a Treatment Plan” OR “for the following treatment or action”.

### **What is the Fee?**

There are no filing fees for Guardianship petitions.

### **Bond of Guardian**

As the proposed guardian, the Petitioner must prepare and file a **Bond (MPC 801)** for both temporary and permanent guardianship. The Bond promises that the petitioner agrees to submit to the jurisdiction of the Court. Since this appointment does not authorize the guardian to control the assets of the respondent, the guardian’s bond may be filed without sureties.

The Bond requires the estimated value of the real estate and the personal estate belonging to the Respondent.

### **Service: Citation and Notice**

The Court will issue a citation with a “return date”. Anyone who objects must do so by filing an appearance form by the return date. The citation must be delivered to the Respondent in person (“in hand”) by a disinterested person (someone who has no involvement in the case). Other interested parties will receive the notice by mail or in person. If an interested party is of parts unknown, the Court will order the Petitioner to publish the citation in the Respondent’s local newspaper. If warranted, a fee waiver may be granted by the Court to cover the cost of publication.

### **Additional Forms You Need To File**



All forms can be found on our website at:

<http://www.mass.gov/courts/forms/pfc/pfc-upc-forms-generic.html>

**Medical Certificate (MPC 400)** for an incapacitated person who is mentally ill.

Exam of Respondent must take place within 30 days of each hearing date.

The Medical Certificate must be signed by a registered physician, a licensed psychologist or a certified psychiatric nurse clinical specialist.

**Clinical Team Report (MPC 402)** for an incapacitated person who is developmentally delayed

Exam of Respondent must have taken place within 180 days of the day the petition is filed.

The Clinical Team Report must be signed by a physician, a licensed psychologist and a social worker.

**Clinician's Affidavit as to Competency and Treatment (MPC 800)**

Clinician's Affidavit must be completed by a licensed physician, psychiatrist, or certified psychiatric nurse clinical specialist who treats the Respondent or who has evaluated the Respondent.

**Temporary Guardianship**

While a Petition for Guardianship is pending, if an emergency exists, the court may appoint a temporary guardian for a specific purpose, for a specific length of time (usually 90 days).

**The Hearing**

At the time of the hearing, Petitioner needs to submit proposed **Findings of Fact** and a proposed **Treatment Plan (MPC 825)**. The Treatment Plan includes the antipsychotic medication(s) being proposed (with dosage and dosage range) and lists any alternative medications that might be implemented within the next 12 months.

The Court will require a CARI (criminal record check) of the proposed guardian.

**What Happens Next?**

If the judge decides the Respondent is competent to make his or her own decisions, the guardianship petition will be dismissed.

If the Court finds that the guardianship should be allowed, and that the *Rogers* Treatment Plan should be approved, the Court will issue a decree, findings, and approve a treatment plan.

The Court will appoint a Guardian (who may be the Petitioner(s) or a different person), and a *Rogers* Monitor. NOTE: The Guardian and the *Rogers* Monitor may be the same person, or two different people.

An initial **Guardian Report/Care Plan (MPC 821)** must be filed 60 days after the appointment of a permanent guardian.

Finally, the Court will set a review date for one year after the permanent decree. At the yearly review, the Court will consider reports submitted and either

- Continue the treatment plan for another year if no changes OR
- Approve a new (different) treatment plan OR
- If a doctor has determined that the incapacitated person does not need to continue taking antipsychotic medications, and has regained the ability to make his or her own decisions, dismiss the guardianship.

## Administrative Process for Uncontested

### Annual *Rogers* Reviews \*

There is an Administrative Process for annual *Rogers* reviews and/or extensions if there are no disagreements between those involved in the care of the I.P. This process is available beginning one year after entry of the permanent decree of guardianship.

If there is NO disagreement, the following paperwork shall be filed with the Court in order to have the matter handled administratively without the necessity of having a hearing before a judge:

- Motion to Extend and/or Amend Treatment Plan (MPC 826)
- Motion to Waive Appearance of Respondent (MPC 391)
- Clinician's Affidavit and Report for Extension /Amendment (MPC 823)
- Treatment Plan (MPC 825)
- Report of Monitor (MPC 404)
- Guardian's Care Plan/ Report (MPC 821)
- Representations of Respondent's Counsel (MPC 512)
- Review Order (MPC 827)

\*SEE Standing Order 4-11 of the Probate and Family Court

<http://www.mass.gov/courts/case-legal-res/rules-of-court/probate/pfc-orders/4-11.html>

## Nursing Home Admission

After a Decree and Order of Appointment of a Guardian of an Adult has issued, if the Guardian seeks to admit the Incapacitated Person to a nursing facility for sixty (60) days or less, s/he must file a **Notice of Intent to Admit to a Nursing Facility for Short Term Service (MPC 839)**.

If a nursing home stay of more than sixty (60) days is anticipated or becomes necessary, a **Petition to Expand, Modify or Limit the Powers of a Guardian and/or Conservator (MPC 220)** will need to be filed.

## Additional Information

The Guardian, the Respondent, or any other interested party may request a court hearing whenever circumstances require it.

A permanent guardianship ends (terminates) in one of two ways: the Guardian or the Incapacitated Person dies OR it is determined that the I.P. is no longer incapacitated.

All forms can be found on our website at:

<http://www.mass.gov/courts/forms/pfc/pfc-upc-forms-generic.html>



[www.mass.gov/courts](http://www.mass.gov/courts)