

Article 8.

Powers and Duties of Guardian of the Person.

**§ 35A-1240. Applicability of Article.**

This Article applies only to guardians of the person, including general guardians exercising authority as guardian of the person. (1987, c. 550, s. 1.)

**§ 35A-1241. Powers and duties of guardian of the person.**

(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of the guardian's ward and shall make provision for the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for the ward's training, education, employment, rehabilitation, or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode inside or outside this State. In arranging for a place of abode, the guardian of the person shall give preference to places inside this State over places outside this State if in-State and out-of-State places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. If the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a ward with a mental illness or intellectual disability unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of the guardian's duties as guardian of the ward's person.

(c) A guardian of the person who has acted within the limits imposed by this Article or the order of appointment or both is not liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

- (1) Authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or

- service, in a situation where the damages result from the negligence or other acts of a third person; or
- (2) Authorizing medical treatment or surgery for the ward, if the guardian acted in good faith and was not negligent. (1987, c. 550, s. 1; 2003-13, s. 4; 2007-502, s. 9; 2018-47, s. 1(d).)

**§ 35A-1242. Status reports for incompetent wards.**

(a) Any corporation or disinterested public agent that is guardian of the person for an incompetent person, within six months after being appointed, shall file an initial status report with the clerk and submit a copy of the initial status report to the designated agency, if there is one. Such guardian shall file a second status report with the clerk one year after being appointed, and subsequent reports annually thereafter. The clerk may order any other guardian of the person to file status reports. If a guardian required by this section to file a status report is employed by the designated agency, the guardian shall file any required status report with the clerk and submit a copy of the status report to the designated agency.

(a1) Each status report shall include all of the following:

- (1) A report or summary of recent medical and dental examinations of the ward by one or more physicians and dentists. In instances when the guardian has made diligent but unsuccessful attempts to secure this information, the guardian shall include in the status report an explanation and documentation of all actions taken to attempt to secure this information.
- (2) A report on the guardian's performance of the duties set forth in this Chapter and in the clerk's order appointing the guardian.
- (3) A report on the ward's residence, education, employment, and rehabilitation or habilitation.
- (4) A report of the guardian's efforts to restore competency.
- (5) A report of the guardian's efforts to seek alternatives to guardianship.
- (6) If the guardian is a disinterested public agent or corporation, a report of the efforts to identify alternative guardians.
- (7) The guardian's recommendations for implementing a more limited guardianship, preserving for the ward the opportunity to exercise rights that are within the ward's comprehension and judgment.
- (8) Any additional reports or information required by the clerk.

(a2) The guardian may include in each status report additional information pertaining to the ward's best interests.

(b) Each status report shall be filed (i) under the guardian's oath or affirmation that the report is complete and accurate so far as the guardian is informed and can determine or (ii) with the signature of a disinterested, competent witness to a statement by the guardian that the report is complete and accurate so far as the guardian is informed and can determine. Status reports filed with the signature of a disinterested, competent witness shall include the full name, address, and telephone number of the witness.

(b1) The clerk shall make status reports submitted by corporations or disinterested public agents available to the Director, or the Director's designee, of the Division of Aging and Adult Services within the Department of Health and Human Services. The Director, or the Director's designee, shall review the status reports in connection with the Department's regular program of oversight for these categories of guardians.

(c) A clerk or designated agency that receives a status report shall not make the status report available to anyone other than the guardian, the ward, the court, or State or local human services agencies providing services to the ward.

(d) The clerk, on the clerk's own motion, or any interested party, may file a motion in the cause pursuant to G.S. 35A-1207 with the clerk in the county where the guardianship is filed to request modification of the order appointing the guardian or guardians or for consideration of any matters contained in the status report. (1987, c. 550, s. 1; 2014-100, s. 12D.4(b).)

#### **§ 35A-1243. Duties of designated agency.**

(a) Within 30 days after it receives a status report, the designated agency shall certify to the clerk that it has reviewed the report and shall mail a copy of its certification to the guardian.

(b) At the same time, the designated agency may:

- (1) Send its written comments on the report to the clerk, the guardian, or any other person who may have an interest in the ward's welfare;
- (2) Notify the guardian that it is able to help the guardian in the performance of his duties;
- (3) Petition the clerk for an order requiring the guardian to perform the duties imposed on him by the clerk or this Article if it appears that the guardian is not performing those duties;
- (4) Petition the clerk for an order modifying the terms of the guardianship or the guardianship program or plan if it appears that such should be modified;
- (5) Petition the clerk for an order removing the guardian from his duties and appointing a successor guardian if it appears that the guardian should be removed for cause;
- (6) Petition the clerk for an adjudication of restoration to competency; or
- (7) Petition the clerk for any other appropriate orders.

(c) If the designated agency files such a petition, it shall cause the petition to be signed and acknowledged by the officer, official, employee, or agent who has personal knowledge of the facts set forth in the petition, and it shall set forth all facts known to it that tend to support the relief sought by the petition.

(d) The clerk shall take appropriate action upon the petition in accordance with other provisions or requirements of this Chapter. (1987, c. 550, s. 1.)

#### **§ 35A-1244. Procedure to compel status reports.**

If a guardian of the person fails to file a status report as required, or renders an unsatisfactory report, the clerk shall, on his own motion or the request of an interested party, promptly order the guardian to render a full and satisfactory report within 20 days after service of the order. If, after due service of the order, the guardian does not file such report, or obtain further time in which to file it, on or before the return day of the order, the clerk may remove him from office or may issue an order or notice to show cause for civil or criminal contempt as provided in Chapter 5A of the General Statutes. In such proceedings, the defaulting guardian may be held personally liable for the costs of the proceeding, including the costs of service of all notices or motions incidental thereto, or the amount of the costs of the proceeding may be deducted from any commissions due to the guardian of the person. Where a corporation or disinterested public agent is guardian of the person, the president or director or person or persons having charge of the guardianship for the corporation or agency, or the person to whom the duty of making status reports has been assigned

by the corporation or agency, may be proceeded against as herein provided as if he or they were the guardian personally, provided, the corporation or agency itself may also be fined and/or removed as guardian for such failure or omission. (1987, c. 550, s. 1.)

**§ 35A-1245. Procedure to permit the sterilization of a ward with a mental illness or intellectual disability in the case of medical necessity.**

(a) A guardian of the person shall not consent to the sterilization of a ward with a mental illness or intellectual disability unless an order from the clerk has been obtained in accordance with this section.

(b) If a ward with a mental illness or intellectual disability needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain all of the following:

- (1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.
- (2) The name and address of the physician who will perform the procedure.
- (3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the ward with a mental illness or intellectual disability is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.
- (4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds all of the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e). (2003-13, s. 1(a); 2005-250, s. 5; 2018-47, s. 1(e).)

**§§ 35A-1246 through 35A-1249: Reserved for future codification purposes.**