

**CONSENT AND GUARDIANSHIP RULES FOR MINORS
AND INCOMPETENT OR MENTALLY ILL ADULTS**

I. BACKGROUND

The theory behind guardianship is that incompetent persons need someone to make legal decisions concerning their person and property. Individuals may be incompetent because of status (age), physical condition (comatose, severely developmentally disabled adult), or court order.

Michigan law forbids health care professionals from compelling an individual to undergo treatment or procedures against that individual's wishes. If the individual is not competent to give or withhold consent, a guardian is needed to give a written "substituted consent" for the individual in non-emergency situations. A guardian is not needed where consent is not required.

II. GUARDIANSHIP RULES AND CONSENTS FOR ADULTS

A. Incompetent Adults

1. Basic Rule - Adults are free to give or withhold consent to medical or surgical procedures or treatments unless they are incompetent.
2. Presumption of Competent - Adults are presumed to be competent, unless the Probate Court rules and has reasonable evidence to determine that the adults cannot understand the nature and consequences of their actions and that they cannot care for themselves or their property.
3. Non-Emergency Treatment and Procedures - If adults are determined to be incompetent by the Probate Court, written consent of the persons' nearest relatives or legally-appointed guardians is necessary for non-emergency medical treatment.
 - a. If an adult is incompetent on a temporary basis (comatose or incompetent due to medication), the spouse may consent. In Michigan, if the spouse is unavailable, then the incompetent adult's parents can consent.
If the parents are unavailable, then consent might be obtained from the patient's adult children, then siblings.
 - b. If an adult is incompetent without spouse or next-of-kin, guardianship is determined by Probate Court in patient's county of residence. This appointed guardian may consent.
4. Emergency Treatment and Procedures - In emergency situations (i.e., where a life or limb is threatened), if time permits, the Probate Court for the hospital's county may act as a legal guardian for an alleged incompetent person if no other guardian has been appointed.
5. Temporary Guardianship - If an appointed guardian fails to effectively perform guardianship duties and the welfare of the incompetent person requires immediate action, the court may appoint a temporary guardian for a period not to exceed six months.

B. Mentally Ill or developmentally disabled Adults

1. Basic Rule - An adult can be mentally ill or developmentally disabled but not incompetent. The Probate Court of the patient's county of residence must follow the standard procedure for determining competency, even if the mentally ill or developmentally disabled adult was involuntarily committed.
2. Emergency or Non-emergency Treatment and Procedures - If a guardian is appointed for a mentally ill or developmentally disabled adult, the court must specifically set forth the guardian's powers and duties. A guardian may authorize routine treatments or procedures and, if time permits, emergency procedures.
3. Extraordinary Treatment and Procedures - The guardian appointed for a mentally ill or developmentally disabled adult can authorize extraordinary procedures only when specifically ordered by the Probate Court. Extraordinary procedures include sterilization, abortion, organ donation for transplant, and experimental treatment.