

Is Guardianship Necessary?

Presented by Susan Wehry MD



Goals

Advance use of supported
decision-making

Reduce unnecessary guardianships

Improve quality and consistency

Objectives

List three alternatives to guardianship

Discuss the use of team mediation for families and elders facing difficult decisions

Describe the emerging field of supported decision-making

Words you live by

A one-minute reflective exercise

Why

Guardianships increasing

Determination is difficult

Definitions evolving

Reform underway

SDM maturing

Take away messages

Right to self-determination \neq GOOD decisions

Alternatives to guardianship

- exist
- are preferred
- enhance autonomy, self-efficacy
- foster acceptance of support
- result in better life outcomes

We've come a long way...

A word cloud featuring the following text elements: "King" (vertical, dark blue), "Supported" (horizontal, dark blue), "Burton" (diagonal, green), "Resource" (diagonal, dark blue), "Center" (diagonal, green), "Ryan" (diagonal, yellow), "SDM" (diagonal, red), "Hatch" (vertical, brown), "National" (vertical, dark blue), "Blatt" (vertical, green), "Jenny" (vertical, red), and "Jenny" (horizontal, yellow) with the word "Making" in small red text above it.

...and have a long way to go.

Why it matters

Limiting self-determination

Not benign

Complex motivations

Ethical dilemmas

A couple of reminders...

Competency is assumed until a judge says otherwise

Capacity is the ability to “do” something

- Task specific, not global
- Situational
- Contextual
- Changeable

Revised code of Washington

In establishing an office of public guardianship...the legislature reaffirms its commitment to treat liberty and autonomy as paramount values for all Washington residents and to authorize public guardianship only to the minimum extent necessary to provide for health or safety, or to manage financial affairs, when the legal conditions for appointment of a guardian are met.

Adult Guardianship Statute:

Wash. Rev. Code Ann. 2.72.005 to .900; 11.88.005 to 11.92.190

Role of judges

Balance wellbeing and rights

Promote self-determination

Identify less restrictive alternatives

Guide guardians

Determination of restoration

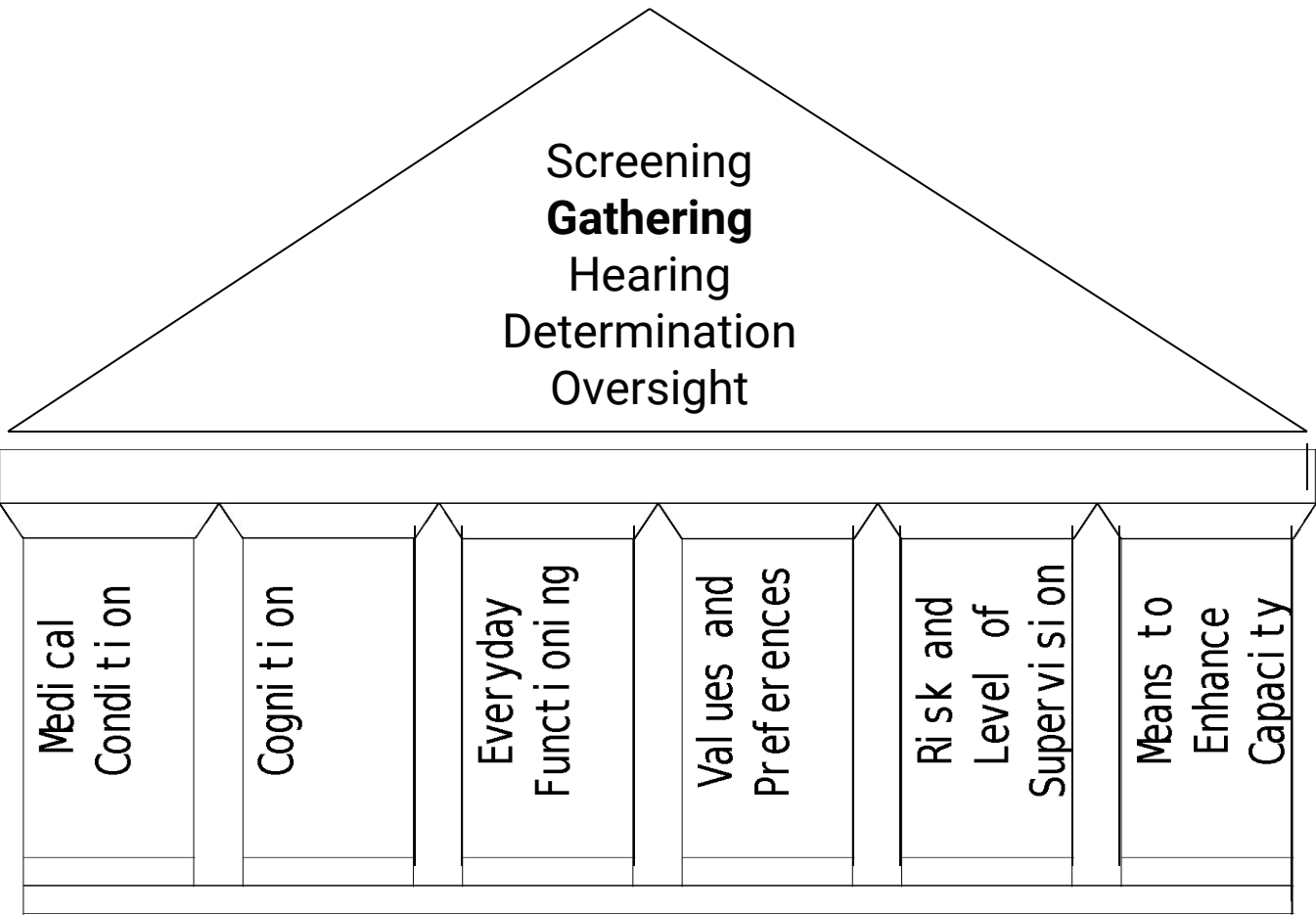
Craft limited guardianship when appropriate

Learning Circle

- What's been your experience with less restrictive alternatives?
- Have you recommended them?
- Do judges use them?
- Do they 'work' to protect safety and autonomy?

Steps in judicial determination

- ❑ Screen cases
- ❑ Gather information
- ❑ Order, interpret, assess quality of report
- ❑ Conduct hearing
- ❑ Make determination
- ❑ Ensure oversight



Common Omissions

Relationship of symptoms to function

Health Conditions

- Reversibility
- Mitigating factors
- Med side effects

If you don't know...Ask

Common Omissions

- Cognitive function
 - Level of consciousness
 - Fluctuations
 - Decision-making ability

Understand

Reason

Appreciate

Choose

Common Omissions

Everyday function

Values and
Preferences

Risk of Harm

Alternatives

Treatment and
Housing

Attendance

Medication list with
doses

Guardianship types in WA

The Guardian of the Person handles:

- Medical Treatment
- Living Situation
- Marriage
- Personal Decisions

The Guardian of the Estate handles:

- Property
- Income
- Financial Decisions

Ethical responsibilities

Mitigate burdens

- Acknowledge strengths
- Attend to sensory needs
- Attend to person's 'timing'

Maximize performance

Propose alternatives

- Family Mediation
- Supported Decision-making

Think about...

Decision-making and thinking

- Nature and extent of impairments
- Residual strengths

What a person can do, as well as can not do

- self, financial, medical, civic, legal, home and community life
- will person use adaptive assistance

Why alternatives, limits

Law requires it

Encourages collaboration

Maximizes autonomy

Supports mental health

Alternatives to full guardianship

Least Restrictive	Middle Ground	Most Restrictive
Individual retains full independence and full decision-making power	Individual retains some --but not all-- decision making power	Guardian has full decision-making control over all areas of a person's life
No court involvement	Limited court involvement	Requires a court order



Meet Pearl

What is mediation?

A **confidential, voluntary, structured, informal** process where a neutral mediator helps people identify and discuss issues of mutual concern.



Why choose family mediation?

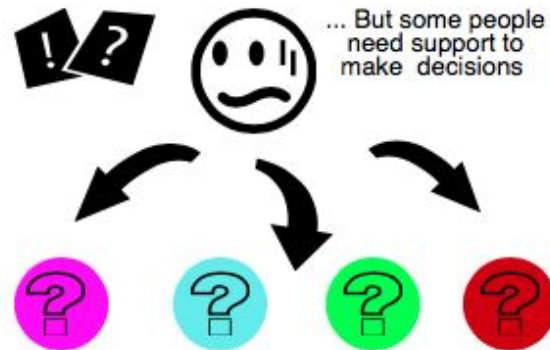
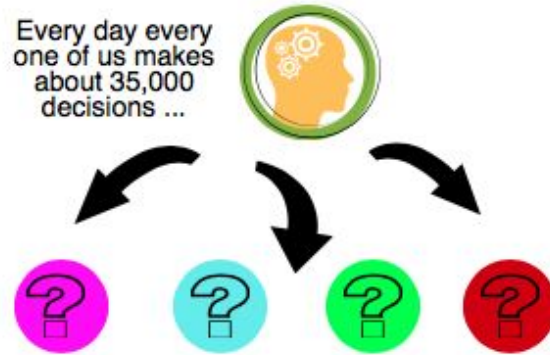
- Family dynamics are complicated
- Late life transitions are complicated
- Simmering disputes often emerge into hostile conflict
- Everyone can express needs and feelings, then deal rationally with the problems
- Mediation can achieve positive conflict resolution outside of a courtroom

What is supported decision-making?

- an alternative to guardianship that allows an individual with a disability to work with a team and make his or her own choices about his or her own life
- the individual designates people to be part of a support network to help with decision-making.

Supported Decision- Making

Every day every
one of us makes
about 35,000
decisions ...



SDM App

SDM

The starting point is...that every human being is communicating all the time and that this communication will include preferences.

Preferences can be built up into expressions of choice and these into formal decisions.

Learning Circle

How likely are you to use or recommend supported decision-making as an alternative to guardianship?

What would make it more likely?



Q and A

Thanks

For being here

For participating

Visit

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[@beingwithaging](https://twitter.com/beingwithaging)

Online resources

<http://supporteddecisionmaking.org>

<http://www.washingtonlawhelp.org>

<http://www.ncpj.org>

<http://elderdecisions.com>

<http://www.abanet.org/aging>

For a copy of all of today's slides, referenced documents and links to other websites go to **SusanWehryMD.com**