

2018

Standards of Practice

First Edition



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Adopted April 20, 2018



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Standards of Practice, Missouri Association of Public Administrators

Preamble

Developing standards for Missouri Public Administrators who serve as public guardians and public conservators is a challenge. The field of professional public guardians and conservators is constantly changing and presents many unique situations. Our goal is to provide Missouri Public Administrators a set of standards that can be applied to the day-to-day practice of public guardianship and conservatorship. With these Standards of Practice, our Association strives to balance between an ideal goal and the reality of practical limitations. While our Association accepts these Standards as the “best standard” or the “highest quality of practice”, we acknowledge that Missouri Public Administrators are county based officials with differing levels of resources, staff, and support within each county. Our Standards reflect the mandate that all Missouri Public Administrators must perform in accordance with the current Missouri law governing guardianship and conservatorship.

To ensure consistency in the way the standards are applied, the following constructions are used: “shall” imposes a duty, “may” creates discretionary authority, “must” creates or recognizes a condition precedent, “is entitled to” creates or recognizes a right, and “may not” imposes a prohibition and is the same as “shall not.” The guidelines that appear in some standards are suggested ways of carrying out those standards.

“Guardian” as used in the standards, means guardian of the person. “Conservatorship” as used in the standards, means conservatorship of the person’s estate (finances, assets and benefits).

In developing this set of standards for Missouri Public Administrators, we wish to acknowledge our use of the National Guardianship Association Standards of Practice. The NGA Standards of Practice of Guardians was first adopted by the NGA Board of Directors and ratified by its membership in 2000. Since that time, NGA has continued to update their Standards of Practice. We are most grateful to the NGA for the use of their Standards of Practice to provide our Association with the framework from which to create our Standards of Practice for Missouri Public Administrators.

Disclaimer: MAPA does NOT monitor or enforce. This is only a teaching tool.

MAPA Standards of Practice

MAPA Standard 1 – Applicable Law and General Standards

- I. Public Administrators shall perform their duties and discharge their obligations in accordance with current state and federal law.
- II. In all appointments, Public Administrators shall comply with the requirements of the court that made the appointment.
- III. MAPA encourages its members to act in a manner consistent with the standards set forth in this document.

MAPA Standard 2 – Public Administrators’ Relationship to the Court

- I. Public Administrators shall know the extent of the powers and the limitations of authority granted by the court. All decisions and actions shall be consistent with that order.
- II. Public Administrators shall obtain court authorization for actions that are subject to court approval.
- III. Public Administrators shall clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions.
- IV. Public Administrators shall seek assistance as needed to fulfill responsibilities to the appointment.
- V. All fees payable to Public Administrators are subject to approval by their supervising Court.
- VI. Public Administrators shall submit reports regarding the status of the appointment to the court as ordered by the court or required by state statute.

MAPA Standard 3 – Public Administrators’ Professional Relationship with the Person

- I. Public Administrators shall treat the person under appointment with dignity.
- II. Public Administrators shall maintain a professional relationship with the person and their support network.
- III. Public Administrators may not engage in sexual relationships with the person.

MAPA Standard 4 – Public Administrators’ Relationship with Family Members and Friends of the Person

- I. Public Administrators, when acting as guardian, shall promote social interactions and meaningful relationships consistent with the best interest of the person under guardianship.
- II. Public Administrators, when acting as conservator, shall maintain their person’s estate plan and comply with applicable law.
- III. Public Administrators may maintain communication with the person’s family and support network regarding significant occurrences that affect the person when that communication would benefit the person. Public Administrators may request and consider support network input when making medical decisions.

MAPA Standard 5 – Public Administrators’ Relationship with Other Professionals and Providers of Service to the Person

- I. Public Administrators shall treat all professionals and service providers with courtesy and respect and shall strive to enhance cooperation on behalf of the person.
- II. Public Administrators shall develop and maintain a working knowledge of the services, providers and facilities available in the community.
- III. Public Administrators shall stay current with changes in community resources to ensure that the person receives high-quality services from the most appropriate provider.
- IV. Public Administrators are discouraged from providing direct service to the person. Public Administrators shall coordinate and monitor services needed by the person to ensure that the person is receiving the appropriate care and treatment.
- V. Public Administrators shall engage the services of professionals (attorneys, accountants, stock brokers, real estate agents, physicians) as necessary to appropriately meet the goals, needs, and preferences of the person subject to the their available resources and best interest.

MAPA Standard 6 – Decision Making

I. Informed Consent Standard

Public Administrators will apply the principals of Informed Consent when making decisions for the person under guardianship. Those principles are:

1. That the agreement to a particular course of action based on full disclosure of the facts needed to make the decision intelligently and assumed that consent is based on adequate information, voluntary action and lack of coercion; and,

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2. A Public Administrator, when acting as guardian, stands in the place of the person and is entitled to the same information and freedom of choice the person would have received if they were not under guardianship.

II. Substituted Judgment Standard

In an effort to promote the underlying values of the person's self-determination well-being, Public Administrators will apply the substituted judgment model for decision making. Public Administrators should attempt to ascertain what decision the person would have made under the circumstances when they had capacity, and use that judgment as the guide for any surrogate decision. If the person's preferences cannot be reasonably ascertained, then the Best Interest Standard is applied.

III. Best Interest Standard

It is the Public Administrator's charge using the Best Interest Standard to make an independent decision on behalf of the person which is in their best interest. When applying the Best Interest Standard, the Public Administrator considers the course of treatment that is the least intrusive, the most normalizing, and the least restrictive course of action possible to provide for the person's needs. The Public Administrator will also consider past practices and evaluate reliable evidence of likely choices. The Best Interest Standard is typically used when the person never had capacity, the person's goals and preferences cannot be ascertained, or if following the person's wishes could cause substantial harm.

MAPA Standard 7 – Least Restrictive Alternative

- I. Public Administrators strive to provide the person with such care, habilitation, and treatment as are appropriate for them considering his or her physical and mental condition and financial means.
- II. Public Administrators will impose on the personal liberty of the person only such restraint as is necessary to prevent them from injuring himself, herself, or others.
- III. Public Administrators shall weigh the risks and benefits of the alternatives available and develop a balance between maximizing the person's participation, independence, and self-determination while maintaining their dignity, protection, and safety. Decisions are specific to the individual and what is the least restrictive alternative for one person may not be so for another.

MAPA Standard 8 – Public Administrators' Duties Regarding Diversity and Personal Preferences of the Person

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- I. Public Administrators shall determine the extent to which the person identifies with a particular set of values. To determine these values, Public Administrators shall also consider the person's attitudes regarding illness, pain, and suffering, death and dying, quality of life issues, societal roles and relationships, funeral and burial customs, or other values that may be appropriate for the person.

MAPA Standard 9 – Confidentiality

- I. Public Administrators shall keep the affairs of the person confidential. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed. Subject to applicable law, Public Administrators may choose not to disclose information when such disclosure is not in the person's best interest.

MAPA Standard 10 – Duties of the Public Administrators when acting as Guardian

- I. When a Public Administrator is acting as guardian or limited guardian of an incapacitated person he or she shall act in the best interest of the person. If appointed limited guardian of an incapacitated person he or she shall have the powers and duties enumerated by the court in the adjudication order or any later modifying order.
- II. The general powers and duties of a Public Administrator when acting as guardian of an incapacitated person shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance; and the powers and duties shall include, but not be limited to, the following:
 1. Assure that the person resides in the best and least restrictive setting reasonably available;
 2. Assure that the person receives medical care and other services that are needed;
 3. Promote and protect the care, comfort, safety, health, and welfare of the person;
 4. Provide required consents on behalf of the person;
 5. To exercise all powers and discharge all duties necessary or proper to implement the provisions of this section.
- III. When acting as guardian, Public Administrators have the right to make medical decisions and consent to medical treatment or the withholding of medical treatment in the best interests of the person without specific court authorization.

This right includes the authority to consent to the entry of a do not resuscitate order.

- IV. Public Administrators, when acting as guardian of the person, have authority to seek admission of the person to a mental health or intellectual disability facility for up thirty days for any purpose without court order. For any admission beyond thirty days, Public Administrators may file an application with the court alleging that the admission of the person to a particular mental health or developmental disability facility is appropriate and in the best interest of the person. Such application shall be accompanied by a physician's statement setting forth the factual basis for the need for continued admission including a statement of the person's current diagnosis, plan of care, treatment or habilitation and the probable duration of the admission.

MAPA Standard 11 – Duties of the Conservator

- I. Public Administrators, when serving as conservator, under supervision of the court, shall: protect, preserve and manage the estate, apply it as provided by law, account for it faithfully, perform all other duties required of the conservator by law, at the termination of the conservatorship deliver the assets of the person to the persons entitled thereto.

MAPA Standard 12 – Conflicts of Interest

- I. Public Administrators shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person or estate. Impropriety or conflict of interest arises where the Public Administrator has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person or estate. Self-dealing arises when the Public Administrator seeks to take advantage of his or her position and acts for his or her own interests rather than for the interests of the person or estate.
- II. A Public Administrator is discouraged from petitioning for appointment as guardian or conservator unless he or she already has a fiduciary relationship with the person and all reasonable alternatives have been exhausted.
- III. Public Administrators shall comply with Missouri law regarding nepotism and patronage.

MAPA Standard 13 – Termination and Limitation of Guardianship

- I. Public Administrators may seek termination or limitation of the guardianship in the following circumstances:
 1. When the person has developed or regained capacity in areas in which he or she was found incapacitated by the court,
 2. When less restrictive alternatives exist,
 3. When the person has died, or
 4. When the guardianship no longer benefits the person.

MAPA Standard 14 – Management of Court Appointments

- I. The Public Administrator shall strive to limit their case load to a size that allows accurately and adequately supporting and protecting the person or estate. When nominated to serve as guardian, Public Administrators shall strive to remain the guardian of last resort.

Definitions

Capacity – Legal qualification, competency, power, or fitness. Ability to understand the nature and effects of one’s acts. (Black's)

Conflict of Interest – Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

Conservator - is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.

Court - An arm of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. (Black's)

Court Appointments – Order entered by the Court that imposes a duty on the Public Administrator including those that impose a fiduciary relationship.

Court Order - A legal document issued by the court and signed by a judge. Examples include a letter of guardianship spelling out directions for the care of the person and the estate and an authorization or denial of a request for action.

Direct Services - These include medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

Estate - Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

Fiduciary - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.

Guardian - A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. All guardians are accountable to the court.

Least Restrictive Alternative - A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person's rights and personal freedoms as appropriate to meet the needs of the person.

Limited Guardian/Conservator - is a guardian/conservator appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks capacity to do some, but not all, of the tasks necessary to care for his or her person or property.

Person Under Guardianship or Simply "Person" - A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Disabled Person, Incapacitated Person, and Ward.

Self-Determination - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.

Successor Guardian/Conservator – is a guardian/conservator who is appointed to act upon the death, resignation, or revocation of a previous guardian.