

Guardians & Medical Decision Making

Do all guardians have medical decision making power?

No. A judge decides what powers a guardian has based on the patient's needs. This may or may not include medical decision-making power. Check the judge's order to see what powers a guardian has. Be sure to look under "personal needs" powers. The patient legally has any power the guardian does not have.

What's the difference between routine and major medical decisions?

Routine: Generally anything non-invasive or not involving significant risk.

- Examples: flu shots, diagnostic scans, blood work

Major: Generally anything invasive or that comes with significant risk.

- Examples: surgery and chemotherapy

What happens if a guardian doesn't have medical decision-making power and a patient is unable to make a medical decision?

If the patient does not have a Health Care Proxy or prior instructions, consult the [Family Health Care Decisions Act \(FHCDA\)](#). This law lists surrogate decision makers in order of priority, including spouses, adult children, and parents. While guardians are at the top of this list, the FHCDA is referring to guardians *with* medical decision-making authority. If needed, a guardian can petition the court to give them medical decision-making powers.

Guardians & Medical Decisions

What about end-of-life decisions?

Project Guardianship interprets the power to make major medical decisions to include end-of-life decisions. However, some judges choose to have end-of-life decision-making power explicitly granted in the guardianship order. On the other hand, some judges *exclude* end-of-life decision-making powers. In that case, the guardian must go back to court to request the authority to make such decisions.

How does a guardian make a medical decision?

Under the law, guardians *must* follow the known wishes of the patient. If a guardian doesn't know a patient's wishes and is unable to learn what they are, the guardian must make medical decisions based on the patient's best interest. [The law outlines factors](#) the guardian must consider in this situation.

Are there any medical decisions a guardian cannot make?

A guardian cannot:

- Consent to mental health treatment or admission to a mental health facility over a person's objection. This requires the same protocols as when someone does not have a guardian.
- Consent to substance use treatment over a person's objection.

If you need to contact the court:
[New York State Court Directory](#)

