

# Guardians Supporting Decision Making

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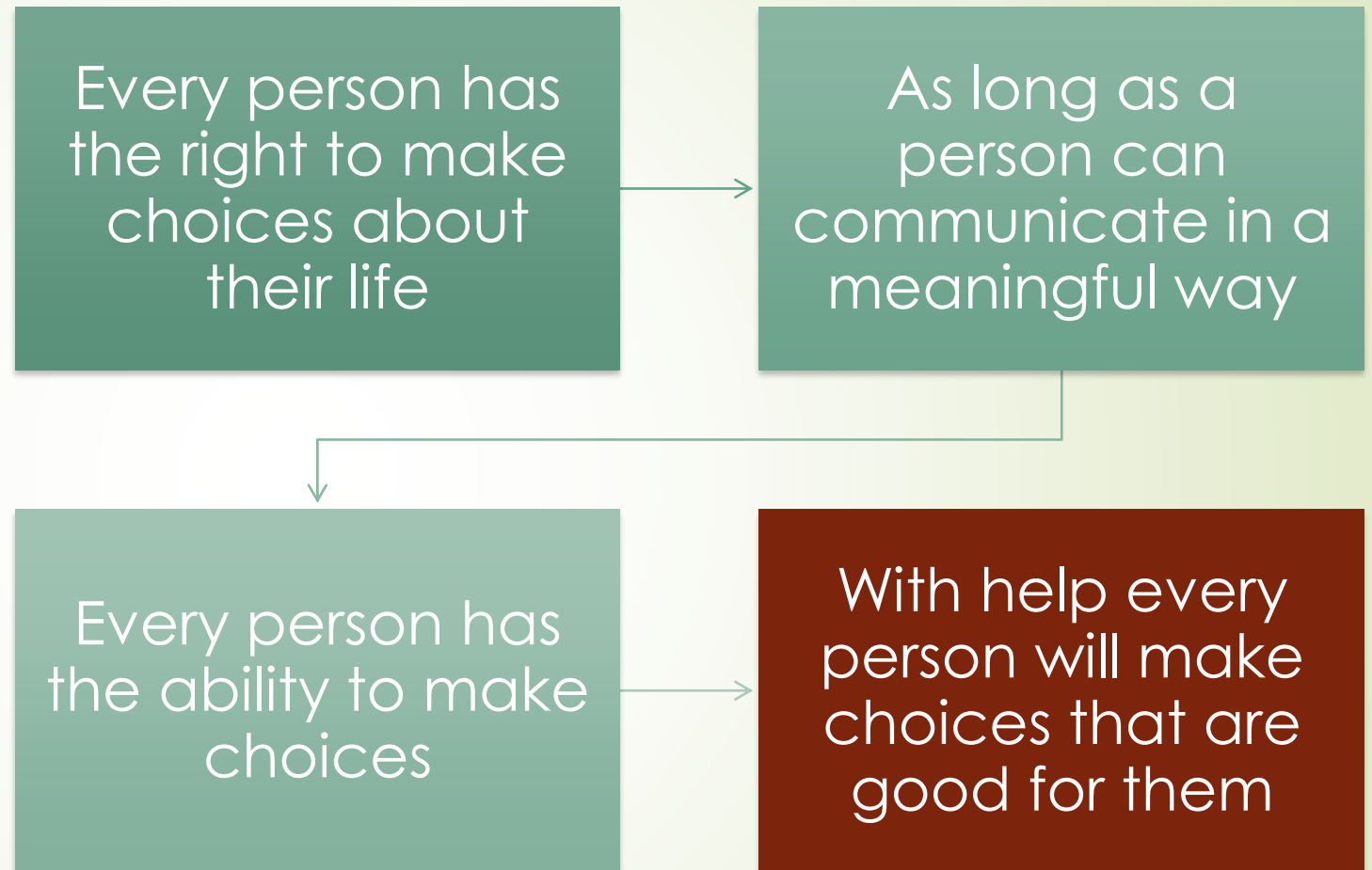
# Supported Decision Making

- ▶ We all do it
- ▶ Asking trusted advisors
  - ▶ Explanations
  - ▶ Guidance
  - ▶ Recommendations
  - ▶ Help making choices
  - ▶ Help carrying out our choices





Core  
Fundamentals  
in SDM



# How Does SDM Fit Into Guardianship?



Decision making model

Residual capacity (ability)

Least restrictive setting

Examine ongoing need for G/C

# Essentials of SDM

- Always –always – always consult with the person
- Carefully explain the issue
- Offer options
- Explain risks and benefits
- Make a recommendation
- Allow the person to make a choice
- Let the person know about concerns
- As needed help carry out the choice



# Choice Is A Rights Issue

➤ Human Right

➤ Constitutional Right



## Dignity in Choice

It is Okay,  
to make a bad  
choice.



# Balancing Risk and Empowerment

## Avoiding Unreasonable Risk





## Limits on Choice

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- Unreasonable danger to other persons or property
- Unable to understand unreasonable risk to self



# Uniform Guardianship Code

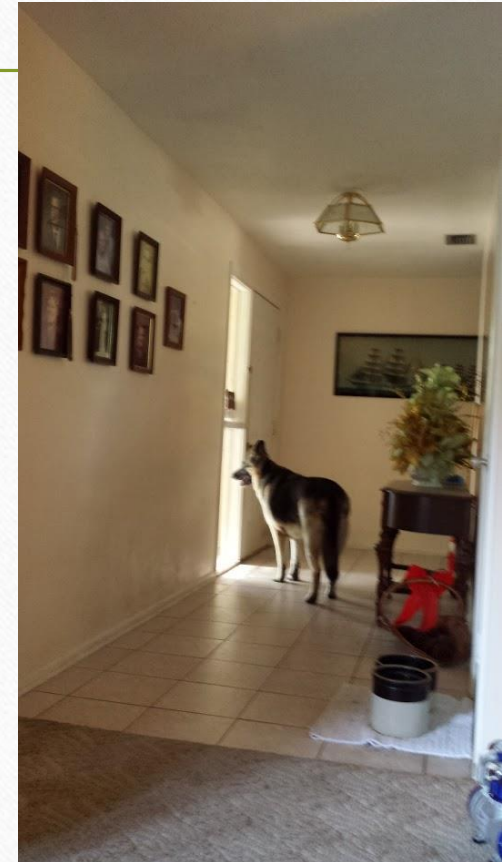
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- “the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making.”



# Many Persons Subject to Guardianship

- Are able to provide input, make choices
- NGA Ethics and Standards of Practice
  - A guardian involves the person to the greatest extent possible in all decision making.



# Changing Words – Evolving Understanding

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- 1800's – Idiots, Drunkards, Lunatics And Asylums
- 1900's – Morons, Wards
- 2000's – A Person In Need Of Protection



# Person in Need of Protection Person Subject to Guardianship

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- Not a person who has lost their rights – the guardian is responsible for protecting the rights of the person
- The role of the guardian is to the extent possible, to help the person make decisions and choices. – Uniform Act
- A guardian selects the option that places the least restrictions on the person's freedom and rights. NGA Standards

# Uniform Guardianship and Protective Arrangements Act

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- Section 313 (b) specifically instructs a guardian to promote self-determination and participation in decision making to the extent possible.
- This passage means nothing unless it means that the guardian should allow a person in need of protection to make choices, within the scope of the ability (also known as capacity), even if those choices are considered by others to be “bad choices.”

# NGA Standards and Ethics

A guardian involves the person to the greatest extent possible in all decision making.



A guardian maximizes the self-reliance and independence of the person.

# Lawyers – MRPC 1.14 a client with diminished capacity - Comments [5] Taking Protective Action

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- In taking any protective action, the lawyer should be guided by factors like:
  - the wishes and values of the client to the extent known,
  - the client's best interests and
  - the goals of intruding into the client's decision-making autonomy to the least extent feasible,
  - maximizing client capacities and respecting the client's family and social connections.



# Over Protection

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- Easily becomes the default
- Unreasonable restrictions are abuse

# Who Are We Protecting from What?

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- The Person
- The Supporter / Guardian
- Society

# The Person

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The  
Supporter  
or  
Guardian

Feeling Responsible

Needing to Apologize to  
Others

Hurt Feelings

Rescuing

# Society

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- Embarrassment
- Inconvenience
- Injury
- Loss (is it meaningful?)



# Smoking



- Rebecca wants to smoke. She is 52 and has smoked since she was a teenager. Over the years there have been several attempts to get her to stop. When cigarettes are taken away, she becomes agitated, upset, and within a couple of days her family and caregivers relent and provide her with cigarettes. When asked about the health risks, she responds with “smoking makes me calmer, I feel better.”
- - What if she starts smoking in bed?
  - What if she starts falling asleep while smoking in bed?
  - Prohibit or agree to restrictions for safety?



# Legal Risks

## Contract

- Guardianship may be a defense to contracts by the person
- Liability limited to assets of the person
- Guardian not personally liable, if it is clear that the guardian was acting in a representative capacity

## Personal Injury / Tort

- Intent
- Negligence

## The Person Can Commit a Crime

- Intent
- Responsibility – capacity to stand trial

## Criminal Liability of the Guardian

- For acts of the Protected Person, only for helping, or knowing failure to stop
- Exploitation
- Neglect
- Abuse



# Ellie wants to manage her finances.

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- She is bipolar. When depressed she fails to pay her bills. When manic, she goes shopping and takes tables full of strangers to lunch, overdrawing her account. She has sufficient income to live comfortably, if the money is carefully managed. Because of side effects, additional medication is not recommended by her psychiatrist.
  - Should Ellie be allowed to manage her money?
  - What tools can be used to protect and empower her?
    - Two signature accounts
    - Auto deposit and auto payment
    - Limits on credit or debit cards
    - Affordable cash allowance



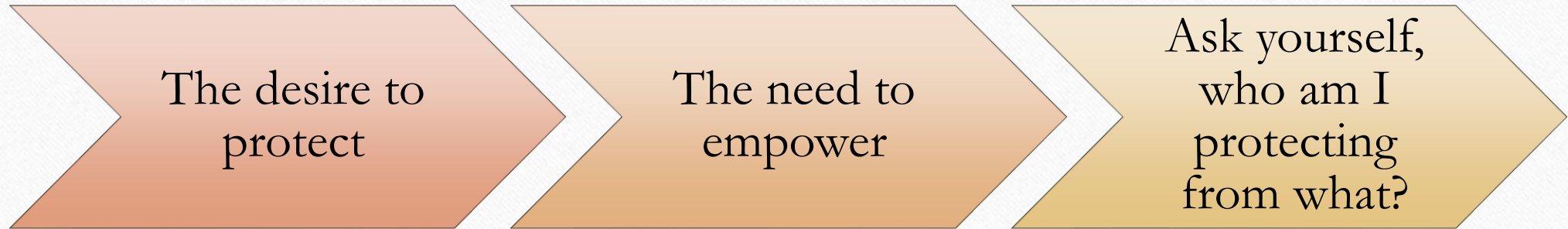
# Falls prevention - if no one walks, no one falls

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- If we want to reduce the risks of falls, we can prevent walking. Placing wheel chairs, walking sticks and walkers out of reach, raising bedrails, requiring people to call for help to get out of bed. Force the use of wheelchairs.
  - Is restricting movement the best way to reduce the risk of falls?

# We Balance

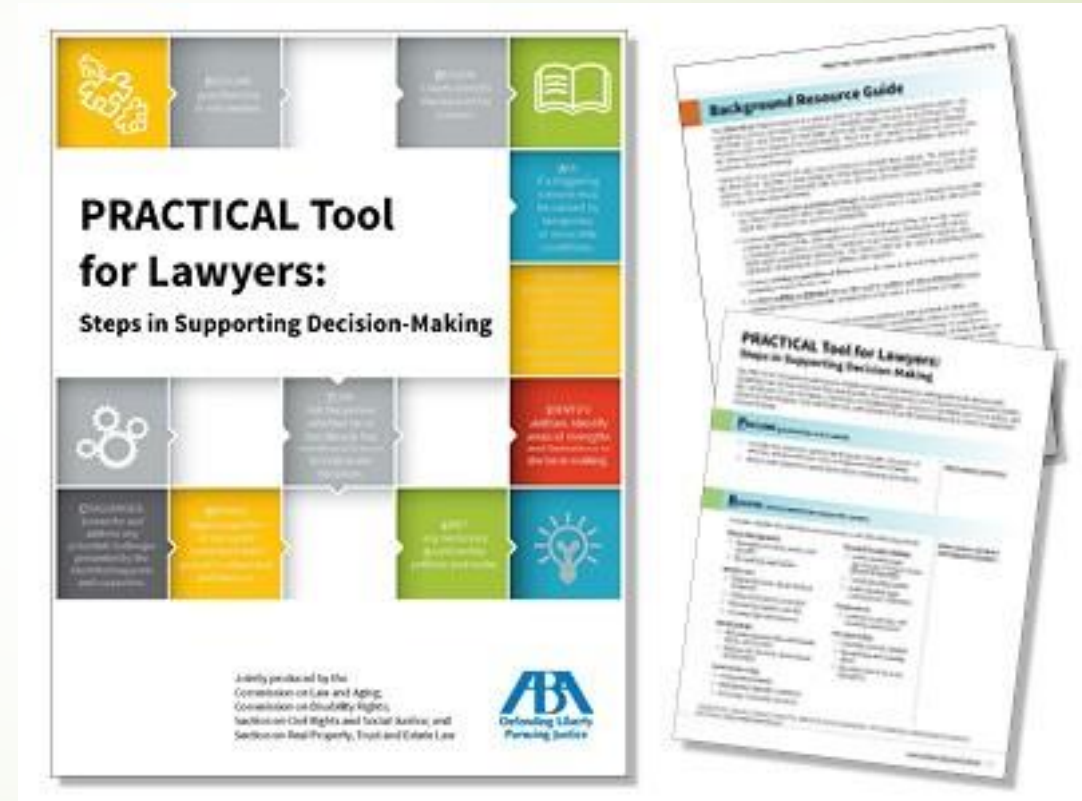


# Technology redefines ability



# Practical Guide to SDM

9 Issues to Explore Or Consider



**Presume** that guardianship is not needed.

- Guardianship or Conservatorship has become the default solution
- Is it still needed? Was it ever really needed?



## **Reason.**

**Clearly identify the reasons for concern.**

- **Money Management:**
- **Health Care:**
- **Relationships:**
- **Community Living:**
- **Personal Decision-Making:**
- **Employment:**
- **Personal Safety:**



**Ask if a triggering concern may be (or was) caused by temporary or reversible conditions.**

- **Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain
- **Sensory deficits:** hearing or vision loss
- **Medication** side effects
- **Psychological conditions:** stress, grief, depression, disorientation
- **Stereotypes or cultural barriers**



**KEEP  
CALM  
IT'S  
JUST  
TEMPORARY**



## **Community.**

- Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.
- Ask “what would it take?” to enable the person to make the needed decision(s) or address the presenting concern.



## **Team. Ask the person whether he or she already has developed a team to help make decisions.**

- Does the person have family members, friends, or professionals available to help?
- Has the person appointed a surrogate to help make decisions?
- Help Develop a Team



# Identify abilities. Identify areas of strengths and limitations in decision-making


- What does the person do alone
- What to they need help with
- Support only as needed
- Ability is situational



**Challenges.** Screen for and address any potential challenges presented by the identified supports and supporters.

- **Possible challenges to identified supports:**
- **Possible concerns about supporters:**





**Appoint** legal supporter or surrogate consistent with person's values and preferences.

- Select the best people
- Train Guardians and Conservators in SDM / person driven decision making

# **Limit any necessary guardianship petition and order.**

- Limit Order
- Instruct Guardians and Conservators in SDM decision making model



# Concerns About SDM

- Abuse and exploitation
- The choices are not “in her best interest”
- He asks the same question, over and over
- She forgets the choice that she made
- It is so hard to communicate
- Sooner or later SDM won't work



# Special Thanks <https://ncler.acl.gov/>

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Thank You!

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