

Corporate Legal Guardianship: An Innovative Concept in Advocacy and Protective Services

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Corporate legal guardianship, which allows a single legal entity to serve as guardian to thousands of clients at one time, has had a profound effect on the advocacy and provision of protective services to developmentally disabled persons residing within developmental and community-based residential centers in Ohio. This article explains the concept of this new strategy by reference to and case samples from an existing model. In addition, it discusses the concept's broad applicability to classes of people other than the developmentally disabled and shows its potential as a unique interdisciplinary approach.

The concept of legal guardianship for people who, for one reason or another, cannot care for themselves or their assets without some outside assistance is not new. However, the establishment of a non-profit corporation that utilizes centralized resources and an interdisciplinary policy-making board of trustees to exercise the constitutionally protected rights of persons unable to do so for themselves is unique. A corporation in the role of service accessor for its clients rather than direct service provider has redefined the meaning of "advocacy" within the social welfare arena.

HISTORICAL BACKGROUND

There have been many problems associated with the institutional treatment of the developmentally disabled throughout history. Overcrowding and its consequential adverse effects on institutional staff and patients is often the most striking feature identified by observers.¹ Even the most well-meaning staff cannot provide the treatment needed because, usually, there are an excessive number of patients under their care.² The low educational levels of many institutional staff is another recurring problem. Either no formal educational qualifications are found³ or there is a lack of specialized training in the area of developmental disabilities, which can

prevent clients from receiving the attention they need.⁴ A further problem is that, in many cases, when clients are institutionalized, any chance of their ever returning to the community is unlikely. In addition, because of current economic conditions, many states are in the process of reducing available funds to institutions, thus deleting or jeopardizing existing program services.

In 1968, the International League of Societies for the Mentally Handicapped spelled out the rights of retarded persons of all nations. Three major provisions of their statement are as follows: (1) The mentally retarded person has a right to a qualified guardian when this is required to protect his or her personal well-being and interests. No person rendering direct services to the mentally retarded should also be his or her guardian. (2) The mentally retarded person has a right to protection from exploitation, abuse, and degrading treatment. (3) Some mentally retarded persons may be unable, due to the severity of their handicap, to exercise all of their rights in a meaningful way. For others, modifications of some or all of their rights is appropriate. The procedure used for modification or denial of rights must contain legal safeguards against every form of abuse.⁵

In 1971, the Ohio Legislature passed House Bill 290, which established procedures for the creation of protective services and corporate guardianships for the mentally retarded citizens of the state. The legislature passed Senate Bill 336 in 1975, which established in law the principle that no person rendering direct services to the mentally retarded should also be his or her guardian. In 1977, the Ohio Department of Mental Retardation and Developmental Disabilities (DMRDD) contracted with Guardian Services Ltd., a nonprofit Ohio corporation, to provide guardianship and trusteeship services to certain developmentally disabled persons residing at large state insti-

tutional developmental centers operated by the department. In 1979, DMRDD entered into a similar contract with a second non-profit Ohio corporation, Sentinel Services for the Developmentally Disabled, Inc., to provide protective services for the developmentally disabled in community-based residential centers. Finally, in 1983, the department decided, for fiscal reasons, to have only one contract agency advocate for the developmentally disabled in both the public developmental centers and in the private community-based residential centers. As a result, Guardian Services Ltd. and Sentinel Services for the Developmentally Disabled, Inc., merged into a single corporation known as Advocacy and Protective Services, Inc. (APSI).

SERVICES OF APSI

Three basic services are rendered by APSI. The first is guardianship, which arranges for and monitors medical and dental services, living arrangements, programming, training, and therapy. The second is trusteeship, which involves tasks such as accounting and budgeting of clients' individual bank accounts to ensure that their debts for food, clothing, shelter, and medical treatment are met. The third is protectorship, which provides guidance and encouragement in the development of a client's maximum self-reliance. This entails counseling clients and offering assistance to protect them from abuse, neglect, or exploitation. Protectorship also helps clients establish reasonable goals for self-improvement. The term "protective service" is defined by an Ohio statute as the service of performing the "duties of a guardian or trustee, or acting as a protector, with respect to a mentally retarded or other developmentally disabled person."⁶ Further, a state statute says that

the Department of Mental Retardation and Developmental Disabilities shall

develop a statewide system of protective service in accordance with rules and standards established by the Department. With respect to this program, the Department may enter into a contract with any responsible agency, public or private, for provision of protective services by the agency.⁷

Thus, state statutes in Ohio establish the rationale for the existence of APSI and the scope and nature of the protective services that it provides.

Eligibility

In order to qualify for guardianship, trusteeship, or protectorship services, a person must be 18 years of age or older and must be living in a public developmental center, a residential facility, a private residence, a group home, or a nursing home. The person must be identified as having mental retardation, a developmental disability that is attributable to cerebral palsy or epilepsy, a neurological disorder closely related to mental retardation, or a condition that requires treatment similar to that for mental retardation. The person shall be identified as eligible for services by APSI or DMRDD staff through comprehensive evaluation of medical, psychological, social, and educational conditions.

In addition, to be eligible for guardianship, a person must meet the legal standard for incompetence, which is defined, in Ohio, as follows:

Incompetent means any person who by reason of advanced age, improvidence, or mental or physical disability or infirmity, chronic alcoholism, mental retardation or mental illness, is incapable of taking proper care of himself or his property or fails to provide for his family or other persons for whom he is charged by law to provide.⁸

To be eligible for trusteeship services, a person need not be adjudicated incompetent, but probative evidence must be developed that clearly demonstrates the person's inability to manage personal assets and funds. For a person to be eligible for protectorship, it must be clearly established that a person will significantly benefit by receiving guidance and service, as well benefit from encouragement to develop maximum self-reliance. Generally, protectorships terminate after six months; they are renewed only for good cause and such renewals are subject to departmental review. An application for guardianship, trusteeship, or protectorship is filed in the

proper probate court, and after appointment is made, APSI begins a service program.

Service Delivery

APSI is organized in traditional hierarchical fashion with a board of trustees; an administrative staff consisting of an executive director, a program director and an associate program director at the highest levels; supervisors; and client representatives. Ohio is divided into five regions, with a supervisor in each region who is designated to manage the several client representatives who serve as direct line workers. In each developmental center and community-based residential center, the number of client representatives assigned is proportional to the number of clients. Each client in APSI's service program is contacted as often as necessary for effective protective service by a client representative who is responsible for visiting the client, becoming familiar with his or her needs, and advocating in behalf of his or her interests. The client representative works to provide access to appropriate services for clients and relies on administrators and board members to provide informed and knowledgeable consent in regard to placement, medical and educational services, and other life decisions in behalf of clients. As a result, APSI has developed a professional staff comprised of individuals having a wide range of skills and knowledge. APSI staff are trained to handle the specialized problems and contingencies that arise in the life of a developmentally disabled person, to provide knowing and informed consent in behalf of clients, and to investigate and evaluate individual programmatic needs and advocate for the implementation of services to meet those needs.

The following examples document the wide variety of services APSI staff have initiated as active advocates:

A client representative observed that one of his wards always whimpered when she urinated. He requested an examination, which revealed a large stone the size of an apple in her bladder. APSI authorized surgery and the stone was removed.

A client representative visited a client who had been placed in a nursing home prior to APSI's being appointed his guardian. The client representative recognized the client's ability to function in a less restrictive environment. APSI requested a transfer for the client to a group home, where he had greater

freedom and an opportunity to develop his full potential.

On numerous occasions, APSI staff have requested and obtained team meetings for the purpose of improving the programmatic aspects of a client's daily activities. Such team meetings have resulted in an increase in programmed activity for many clients.

APSI has filed a one-million-dollar lawsuit for a client who, while residing in a community facility, was severely burned due to the alleged negligence of a staff person at the facility.

Multidisciplinary Policy Formulators

Client representatives identify the unmet legal, educational, medical, and social needs of their clients. Therefore, it is necessary that professionals from a variety of human service professions be represented on the board of trustees, where decisions on care are made. And, because fiscal efficiency and accountability to the state of Ohio is a responsibility of such a corporate structure, it is equally necessary that professionals from the business sector be represented. Social workers, physicians, clinical psychologists, attorneys, professors, and accountants, therefore, compose the APSI board.

As a guardian, APSI becomes involved in evaluating and authorizing medical actions that will involve a moderate to high risk for clients or that will have a major impact on the clients' well-being. Examples of medical actions that require authorization are (1) potentially damaging drug regimens or therapy, (2) extensive use of X rays, (3) actions that drastically affect a client's appearance or functioning, (4) actions that may create emotional, behavioral, or psychological trauma for the client and (5) actions that involve a high-risk factor due to the client's condition or to his or her unique vulnerabilities, such as major allergic reactions or poor health.

At times, more than a medical perspective is needed to understand the full impact that a particular authorization may have on a client; other professionals are consulted on these occasions. No single professional discipline could possibly see all the ramifications that a decision might have on a client that the agency represents and social workers are often facilitators in these circumstances. (The executive director of APSI is a social worker; corporate attorneys and a physician who serves as medical

director contribute to the multidisciplinary philosophy at the administrative level.) An example of the complex ethical decisions the board must face is a situation involving "Code Blue," a circumstance that signifies that medical staff are to use extraordinary measures, such as life-support systems, to keep a client alive. The APSI board established a policy that in general authorizes Code Blue. However, the policy also includes a "No Code" order. This order, which is given for cases in which an individual has met a clinical statutory definition of death or is affected with some disease or disorder of an ongoing degenerative nature that is irreversible and that in the medical opinion of at least two physicians will lead with substantial certainty to the client's death. The ultimate decision to issue a No Code order must be made by board members and is only authorized to preserve the dignity of a person's death and to avoid the intrusive and extraordinary measures that a Code Blue imposes. Although the APSI board has determined that it has the legal and moral authority to take these actions and accept the responsibilities and risks inherent, existing law may remove some issues from the purview of a guardian. If a client becomes pregnant, for example, a guardian (such as APSI) may not have the authority to authorize an abortion. But if existing law does not provide direction in

controversial moral and ethical situations, the board of trustees must then provide guidance for the agency.

POTENTIAL APPLICATIONS OF THE MODEL

Corporate legal guardianship is a revolutionary concept in the field of advocacy. Over 20 states have contacted APSI in order to secure the information needed to establish such a model in their own states. Although APSI only focuses on developmentally disabled adults, such a system could be established to advocate for the needs of those below 18 years of age. In addition, the APSI model has implications for those elderly in society who are no longer capable of making informed decisions of their own and who are without immediate family to assist them in the process. Finally, it has potential application in the area of juvenile corrections for those youths who are without parental supervision or other adult guardians in their lives.

Corporate legal guardianship has far-reaching ramifications for social workers. Besides providing avenues of employment for planners, administrators, and direct service workers in a wide variety of potential practice areas, guardianship responsibilities challenge professionals to learn new skills and means of advocacy. The

multidisciplinary concept fosters interaction between social workers and other professionals. But most important, it ensures that the unmet needs of clients are addressed and, further, ensures that those with responsibility for providing direct services are held accountable.

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Notes and References

1. P. Morris, *Put Away* (New York: Atherton Press, 1969).
2. R. Perrucci, *Circle of Madness* (Englewood Cliffs, N.J.: Prentice-Hall, 1974), p. 43.
3. Morris, *Put Away*.
4. *Ibid.*
5. The International League of Societies for the Mentally Handicapped is located in Brussels, Belgium.
6. Ohio Revised Code, sec. 5123.55(E).
7. Ohio Revised Code, sec. 5123.56(B).
8. Ohio Revised Code, sec. 2111.01(D).

Accepted September 19, 1984



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