

9525.3060 NONDELEGATED CONSENT REQUIRING A COURT ORDER.

Subpart 1. **Generally.** No guardian may give consent for psychosurgery, electroconvulsive therapy, sterilization, or experimental treatment of any kind, unless the procedure is first approved by order of the court. Under Minnesota Statutes, section 525.56, subdivision 3, the court determines if the procedure is in the best interest of the ward. A petition for a court order for nondelegated consent is governed by Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (b). Before the court hearing, the county staff acting as public guardian shall obtain the written recommendation of the department pursuant to Minnesota Statutes, chapter 252A.

Subp. 2. **Sterilization.** The county staff acting as public guardian shall make application to the department for a written recommendation regarding sterilization of a ward. The application must include those reports prepared by a licensed physician, a psychologist who is qualified in the diagnosis and treatment of developmental disabilities, and a social worker who is familiar with the ward's social history and adjustment or the case manager for the ward, as required by Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (c). These reports must include the following:

- A. why sterilization is being proposed;
- B. whether sterilization is necessary and is the least intrusive method for alleviating the problem presented;
- C. whether sterilization is in the best interest of the ward; and
- D. medical reports specifically considering the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the ward.

Subp. 3. **Department recommendation.** The department must not recommend sterilization of a ward, unless the following conditions have been met:

- A. the ward has engaged in sexual intercourse or it is reasonably likely that the ward will engage in sexual intercourse;
- B. all alternative methods of contraception, medical intervention, and behavior modification have been considered or have been tried unsuccessfully, including the use of contraceptives by the partner;
- C. the physician has submitted a written statement that the proposed surgical procedure presents no undue risk for the ward; and
- D. the ward has been fully informed and has agreed to the procedure, to the extent that the ward can comprehend the procedure and the reasons for it.

Subp. 4. **Electroconvulsive therapy, psychosurgery, and experimental treatment.** Under Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (a), no ward may receive electroconvulsive therapy, psychosurgery, or experimental treatment of any kind, unless the court orders the treatment. The county staff acting as public guardian shall make application to the department for a written recommendation before petitioning the court. The application must contain documentation that the following conditions have been met:

- A. the drug, therapy, or treatment is intended to treat a serious or life-threatening disease, pathological condition, or behavioral pattern;
- B. more accepted methods have been tried and found to be ineffective;
- C. there is not a comparable or satisfactory alternative drug, therapy, or treatment available that is approved or generally recognized in the treatment of the disease, pathological condition, or behavior; and
- D. that the county staff acting as public guardian has:
 - (1) visited the ward to observe the condition;
 - (2) informed the ward of the procedure, the potential risks, and the reasons for the procedure in a manner the ward can comprehend;
 - (3) obtained the opinion of the nearest relative, to the extent possible;
 - (4) described the ward's current physical condition in the application;
 - (5) described the effect of previous medical interventions in the application;
 - (6) obtained a physician's recommendation; and
 - (7) made a recommendation for or against the procedure.

Statutory Authority: *MS s 252A.21*

History: *17 SR 2276; L 2013 c 59 art 3 s 21*

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