

April 1, 2021

[Guardian]

Re: [Ward]

Dear Guardian

Thank you for speaking with me earlier this week regarding your ward, [Ward]. This letter follows up on that conversation.

I can imagine that my call to you seemed to be coming out of the blue. As I told you, Disability Rights Wisconsin (formerly known as the Wisconsin Coalition for Advocacy) is the designated Protection and Advocacy System for People with Developmental Disabilities in Wisconsin. (See 42 U.S.C.A. § 15043, Wis. Stats. § 51.62 and Executive Order #19, of Governor Anthony Earl, 1983). In that capacity we investigate allegations of abuse and neglect of people with developmental disabilities. I reached out to you, as guardian of [Ward], because we had received information indicating possible medical neglect of [Ward].

From our conversation I learned or confirmed the following information. [Ward] has not been vaccinated against COVID-19. She contracted the disease earlier. She is eligible for the Family Care program. It is your plan to make an appointment with [Ward]'s primary care physician to determine what his/her recommendation is regarding [Ward] receiving the vaccine. You said you would consider that recommendation, but would not be bound by it.

It was apparent from our conversation that you did not believe the vaccine was a necessary treatment for yourself or for [Ward]. You expressed that you thought it was wrong to inject a person with a foreign substance. You said that the vaccine was not approved and any potential long term effects of taking the vaccine are unknown. Specifically, you expressed concern that the vaccine might cause cancer.

I wanted to follow up on these points. According to the Centers for Disease Control and the Food and Drug Administration, three vaccines have been authorized for emergency use in the United States. They are produced by drug manufacturing companies Pfizer, Moderna, and Johnson & Johnson. I am enclosing the Food and Drug Administration's description of the emergency use authorization process as it relates to the development of COVID-19 vaccines.

The standard for emergency use authorization is whether the known and potential benefits outweigh the known and potential risks of the vaccine. The process is used in order to make safe treatments available to combat novel health threats for which there are no already approved treatments. Emergency use authorization requires extensive clinical trials as a means of establishing both safety and efficacy.

The available data on the vaccine is extensive because so many people were involved in the clinical trials and so many others have already taken it. According to the CDC:

Over 145 million doses of COVID-19 vaccines were administered in the United States from December 14, 2020, through March 29, 2021. During this time, VAERS (Vaccine Adverse Event Reporting System) received 2,509 reports of death (0.0017%) among people who received a COVID-19 vaccine. CDC and FDA physicians review each case report of death as soon as notified and CDC requests medical records to further assess reports. **A review of available clinical information including death certificates, autopsy, and medical records revealed no evidence that vaccination contributed to patient deaths.** CDC and FDA will continue to investigate reports of adverse events, including deaths, reported to VAERS.

Source CDC Website: [Selected Adverse Events Reported after COVID-19 Vaccination | CDC](#)

I am also enclosing a fact sheet on COVID-19 Vaccine Safety that has been produced by the Wisconsin Department of Health Services.

With respect to the possibility that vaccination could cause cancer, according to the Memorial Sloan-Kettering Cancer Center, that is a myth:

Myth: The mRNA vaccines change your DNA and could cause cancer.

Truth: None of the vaccines interact with or alter your DNA in any way, and therefore cannot cause cancer.

Messenger RNA (mRNA) is not the same as DNA and cannot be combined with DNA to change your genetic code. Here's [h]ow mRNA vaccines actually work: The mRNA vaccines use a tiny piece of the coronavirus' genetic code to teach your immune system how to make a protein that will trigger an immune response if you get infected. The mRNA is fragile, so after it delivers the instructions to your cells, it breaks down and disappears from the body (in about 72 hours). The mRNA never even goes into the nucleus of the cell — the part that contains your DNA. Therefore, there is no truth to the myth that somehow the mRNA vaccine could inactivate the genes that suppress tumors.

Source: [Fact Check: 7 Persistent Myths about COVID-19 Vaccines | Memorial Sloan Kettering Cancer Center \(mskcc.org\)](https://www.memorial-sloan-kettering.org/newsroom/fact-check-7-persistent-myths-about-covid-19-vaccines)

The medical consensus is that the authorized vaccines for COVID-19 are safe to take and effective at significantly reducing the risk of death or serious illness from COVID-19. Over 550,000 people have died from COVID-19 in the United States. To date there is not a single death that can be attributed to taking the vaccine.

As the guardian of the person for [Ward], it is your responsibility to provide her with adequate and appropriate medical care, including preventative care, that is in her best interest to receive. Wis. Stat. § 54.25(1)(b). It is undeniably in [Ward]’s best interest to remain free of a debilitating and possibly fatal disease. Especially when that freedom can be achieved by acceptance of a vaccine that has been authorized for use by the Food and Drug Administration, has no serious side-effects, and has been proven highly effective in preventing altogether, or ameliorating the effects of, a serious, life-threatening disease.

A guardian’s personal, subjective opinion about whether they would take the vaccine themselves is not an appropriate consideration when making the best interests determination for a ward. The best interests’ determination must be informed by objective facts and the current state of medical knowledge. Unless there is a specific medical contraindication for [Ward], there is no reason to deny her access to the vaccine. Failing to make arrangements to get [Ward] vaccinated would be neglectful of the ward’s medical needs. Neglect of the ward’s medical needs would be grounds for court review of the conduct of the guardian, as would be failing to act in the best interests of the ward. Wis. Stats § 54.68(2)(c) and (g). Removal of the guardian is one of the possible consequences of neglecting a ward’s medical needs or failing to act in her best interests. Wis. Stat. § 54.68(4)(d).

Another issue is the preferences of the ward. It is my understanding that [Ward] very much wants to be vaccinated. Her desire stems from her experience of having had COVID-19 and a strong desire to avoid a future bout of it. Again, assuming no specific medical contraindications, her desire to receive a vaccine that has been authorized by the FDA and is effective should be honored. As the Wisconsin Supreme Court has held in a guardianship case involving a guardian’s authority to withhold or withdraw life sustaining medical treatment: “Certainly the patient’s wishes, as far as they can be discerned, are an appropriate consideration for the guardian. If the wishes are clear, it is invariable as a matter of law, both common and statutory, that it is in the best interests of the patient to have those wishes honored....” *Matter of Guardianship of L.W.*, 167 Wis.2d 53, 79, 482 N.W.2d 60 (1992).

Since the decision in *L.W.* the guardianship statute was amended and now specifically requires that the guardian “make diligent efforts to identify and honor the individual’s preferences with respect to choice of place of living, **personal liberty** and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and

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procreation.” [emphasis added] Wis. Stat. § 54.25(2)(d)3.b. In other words, ignoring the expressed wishes of the ward on matters where the preference is reasonable and consistent with the ward’s best interests is a breach of the guardian’s duty.

Finally, a guardian is required to “[p]lace the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and **promote the greatest possible integration of the individual into his or her community.**” [emphasis added] Wis. Stat. § 54.25(2)3.a. If we have learned nothing else from this pandemic it is that it has caused people with disabilities to become isolated and separated from their communities with terrible consequences for their mental health and well-being. Getting vaccinated is a way to reintegrate into the community. Ensuring that [Ward] is vaccinated falls squarely within the statutory mandate that her guardians promote her right to be integrated into her community.

Ignoring the ward’s preferences on a matter of this import would also be grounds to have a guardian’s conduct reviewed and would be grounds for removal, as it would portend future problems regarding the guardian’s willingness to comply with the basic responsibilities that are legally attached to the appointment.

The guardian’s legal responsibilities to promote community integration and identify and honor ward preferences whenever possible are included in the letters of guardianship you received when you were appointed. The letters quote the statute.

While I understand that my contact may have been discomfoting to you, please understand that we take our protection obligation seriously. You have indicated that it is your intent to seek medical advice regarding vaccination. Unless there is a specific medical contraindication to vaccination, I would expect that the physician will recommend that [Ward] receive the vaccination. [Ward] has been eligible to receive the vaccine since March 2, 2021. So, there is no impediment to her getting vaccinated.

I hope this letter addresses any concerns you may have regarding the safety and efficacy of the vaccine and helps you better understand the legal responsibility of a guardian to arrange for it when not medically contraindicated. Please feel free to contact me if you have any questions. I can be reached at the Madison office of DRW, at (608) 267-0214.

Sincerely,

Mitchell Hagopian
Managing Attorney

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