

### 5.3 Admission by Consent of Guardian

#### A. By Application of Guardian of the Person or General Guardian

A person previously adjudicated incompetent pursuant to Chapter 35A or former Chapters 33 or 35 of the General Statutes may be voluntarily admitted to a 24-hour facility by application of the guardian of the person or the general guardian. *See* G.S. 122C-231, 35A-1241. A petition for involuntary commitment is not required. G.S. 122C-232(b).

A guardian of the estate alone does not have authority to make medical decisions for a ward. For powers of the guardian of the estate, see G.S. 35A-1251. When appointing a guardian of the person or a general guardian, the clerk of superior court may also make findings of fact regarding the “nature and extent” of the ward’s incompetence and order that the ward retain specific legal rights by ordering a limited guardianship. G.S. 35A-1215(b). As the ward could retain the right to make mental health or substance abuse treatment decisions, the guardianship order must be examined to determine if either has been retained.

These provisions do not apply to a person who is de facto incompetent but who has not been so adjudicated. Involuntary commitment procedures must then be followed (*see supra* Chapters 2 and 3), unless the person has executed an applicable advance instruction or health care power of attorney. *See infra* Chapter 11.

#### B. Guardian Acts for Respondent

The provisions of G.S. 122C-211 regarding the voluntary admission of competent adults (*see infra* Chapter 10) apply to the voluntary admission of an incompetent adult, with the guardian of the person or general guardian acting in place of the individual. G.S. 122C-231. The guardian so acting makes treatment decisions in the best interest of the ward unless the ward executed advance instructions for mental health treatment while competent. If advance instructions exist, the guardian shall follow those instructions in consenting to or refusing treatment, “consistent with G.S. 35A-1201(a)(5).” 122C-73(e). This statute instructs the guardian to allow the ward an opportunity to participate in decision-making “within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent.” G.S. 35A-1201(a)(5).