

A PARENT’S GUIDE TO CONSERVATORSHIP VS. DURABLE POWER OF ATTORNEY

	POA	CONSERVATORSHIP
1) Your child must have the “legal capacity” to understand what they are signing.	True	False
2) Your child can decide whether or not to receive the medical treatment or medications regardless of what you say.	True	False
3) You can “undo a bad deal” which your child might get themselves into.	False	True
4) Your child can decide to live somewhere else and you can’t stop them.	True	False
5) Third parties with whom you deal on behalf of your child, such as doctors, banks, or insurance companies, may question your authority.	True	False
6) Your authority is limited if your child is in attendance at the meeting or appointment.	True	False
7) When your child turns 18, you will not be able to make their IEP decisions.	True	False
7) A Power of Attorney can be revoked at any time by the person who signed it.	True	False

Parents often believe that a Durable Power of Attorney can be signed by their child with a disability and avoid the expense and time of a Conservatorship. A “durable” power of attorney means it was signed by someone who was legally competent at the time of the signing and later became disabled (thus the term “durable” i.e. the document survives the signor’s disability) such as in the case of an elderly person who later develops Alzheimer’s.

A Conservatorship is created by filing a petition in court along with a medical affidavit by the child’s doctor or psychologist which states, in their opinion, the child is in need of a conservator to help provide “supervision, protection and assistance” to them. A Conservatorship gives you all the decision making

authority for your child, as long as the Court Order includes the authority. Some decisions may remain with your child, if you choose.

- 1) “Legal Capacity” - For the document to be valid, the signor must be able to read and understand what it is they are signing. This is what is meant by “legal capacity” to execute a document.
- 2) A Power of Attorney only lets you “step in the shoes” of the principal (your child) if they are not present to make their own decisions. If they are at the doctor’s office with you, the doctor will insist upon getting the patient’s “Informed Consent” before treatment. A power of attorney does not allow you to give this informed consent for your child.
- 3) Your child retains the ability to contract if they sign a Power of Attorney. Therefore they can bind themselves to purchases, online or in person, and you cannot void the contract as you would be able to with a conservatorship.
- 4) A Power of Attorney does not take away the person’s right to make their own decisions, such as where they will live.
- 5) A third party is not required to recognize your authority under a Power of Attorney if they suspect that the person who signed it lacked the capacity to understand what they were signing. A Conservator’s authority comes by a Court Order, which is unquestionable.
- 6) See # 2 above. A Power of Attorney works in some limited situations to deal with 3rd parties on behalf of your child. However, careful consideration should be given to whether the Power of Attorney is truly a valid legal document or merely an attempt to avoid a Conservatorship. A Conservatorship is the only way that parents can actually retain their decision making ability over their child with a disability after he/she reaches the age of 18.
- 7) The IDEA states that your child is to be given the right to make their own IEP decisions at age 18. Your child can allow you to attend their IEP team meetings, but does not have to. In fact, without a Conservatorship, your child can decide to quit school at age 18, which sometimes comes as a great shock to parents who intended for their child to remain in school until the year in which they turn 22 years of age.

In summary, careful consideration should be given to the choice between a Conservatorship and Power of Attorney. Your child’s ability to understand would certainly be one important factor, but parents should also take into consideration the potential harm if their Power of Attorney is inadequate in the eyes of a 3rd party. In addition, due to HIPAA laws, health care professionals seem to be getting more strict when dealing with a parent of an adult child with a disability. If parents use a Power of Attorney signed by their child with a disability, they must make sure that the child was able to understand what they were signing. A Conservatorship is a Court Order that gives the parent unquestionable legal authority to make decisions for their child with a disability.