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NO. 88513-3

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Matter of:
The Suspension of Certified Professional Guardian
LORI A. PETERSEN
CPG No. 9713

**BRIEF OF RESPONDENT CERTIFIED PROFESSIONAL
GUARDIANSHIP BOARD**

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I. INTRODUCTION

Courts appoint professional guardians to care for incapacitated persons based on a particularized consideration of the best interests and rights of the specific individual. *In re Guardianship of Lamb*, 173 Wn.2d 173, 191, 265 P.3d 876 (2011). As a substitute decision maker for the incapacitated ward, the guardian has the duty to consult with the ward, defer to the ward's autonomous decision-making capacity when possible, and cooperate with professional caregivers, friends, and relatives of the ward to identify the ward's preference. *Id.* at 185.

This case is about Lori Petersen's failure to fulfill those duties as a certified professional guardian with regard to two incapacitated persons, J.S. and D.S. The Certified Professional Guardianship Board (Board) determined, based upon an evidentiary hearing before an impartial hearing officer, that Ms. Petersen failed in her duties by not consulting with and considering the views of J.S., D.S., their families, or friends with regard to their care. For this reason, the Board adopted the hearing officer's recommendation that Ms. Petersen's certification as a professional guardian be suspended for 12 months, in addition to other lesser sanctions. The Court should affirm the Board's findings and sanctions.

Ms. Petersen presents this case as if the issues did not relate to her duties toward her incapacitated wards, but instead was simply the product

of a vendetta against her. Ms. Petersen fails to support this theory with evidence in the record.

The proper burden of proof pursuant to the Board's rule is the preponderance of the evidence. But even if, as Ms. Petersen asserts, a clear, cogent, and convincing standard applied, the Board found in the alternative that three of the four charges proven against her were proven by that standard as well.

II. STATEMENT OF ISSUES

1. Were the Board's conclusions supported by substantial evidence in the record and by the law?

2. Do proceedings to oversee the conduct of certified professional guardians, who are judicially appointed and act as officers of the court, through a judicially appointed board and subject to judicial review by this Court, violate principles of separation of powers?

3. Did the Board's proceedings violate the appearance of fairness doctrine, based upon an unsupported claim of bias against Ms. Petersen?

4. Did the Certified Professional Guardianship Board properly require the charges against Ms. Petersen be proven by a preponderance of the evidence, as established by the Board's rules, and not by clear and convincing evidence?

III. STATEMENT OF THE CASE

A. Factual Background

Ms. Petersen describes the facts of this case virtually without reference to the incapacitated persons on whose behalf she undertook the fiduciary duty of acting as guardian. Petersen Opening Br. at 3-13. The story of this case is their story. The record demonstrates Ms. Petersen's pattern of conduct of failing to properly consult with her wards and others who knew them in order to properly make decisions regarding their care.

Ms. Petersen is a certified professional guardian, operating as Empire Care and Guardianship. BR 58, 154-55.¹ The Spokane County Superior Court appointed her as guardian for two incapacitated persons relevant to this appeal, D.S. and J.S. Ex. 18; Ex. 17. D.S. and J.S. both resided at Peterson Place Adult Family Home for most of the period relevant to this case. Peterson Place is one of three adult family homes operated by Heidi Peterson. BR 859-60.²

¹ "BR" refers to the Board's Record, as transmitted to this Court by the Administrative Office of the Courts. Exhibits 1-97 were transmitted to this Court for inclusion in the appellate record in an unpaginated format, and are therefore cited by exhibit number. Most of the same documents also appear in the BR as preliminary exhibits.

² Heidi Peterson is no relation to Respondent Lori Petersen, and their last names are spelled differently. Their relationship was difficult, and included complaints and grievances filed by each against the other. *See, e.g.*, Ex. 2; BR 159-70.

The difficulty began with an incident regarding a third ward of Lori Petersen, E.R. The Board found no violation concerning E.R.'s care, but a few facts are salient as background because they illustrate Lori Petersen's manner in caring for her incapacitated wards. Faced with a situation in which E.R. had been hospitalized while Ms. Petersen was out of town, "[Petersen] testified that the telephone kept ringing, with telephone calls

1. Guardianship Of J.S.

J.S. was 18 years old when Ms. Petersen was appointed as his guardian. Exs. 17, 18 at 6. J.S. suffered from hereditary spinocerebellar ataxia disorder. BR 1195. J.S. endured pain from muscle spasticity, was legally blind, had a limited ability to eat, was wheelchair bound, and had a shortened life expectancy. Ex. 55. J.S. remained cognizant and capable of expressing his needs and opinions. BR 1024, 1048-49. Ms. Petersen confirmed that J.S. could express his preferences in a clear manner “if you took the time and listened very carefully.” BR 1393-94.

The Board found Ms. Petersen violated the standards of practice for certified professional guardians because she removed J.S. from Peterson Place and placed J.S. in hospice care over his objection and to his extreme distress. The reasons why Ms. Petersen’s unilateral move of J.S. to hospice care caused such distress to J.S. go back to the beginning of Ms. Petersen’s tenure as his guardian, when she removed him from the home of a family member, where he was being exploited, and into Peterson Place. BR 826, 1380.

Ms. Petersen accomplished the move of J.S. into Peterson Place with the help of Melody Hayashi-Taisey. Ms. Hayashi-Taisey had been

from Heidi Peterson and the [county mental health professional]. [Petersen] in her testimony manifested annoyance at these various telephone calls, testifying ‘I’m trying to get ready for a triathlon.’” BR 823 (finding of fact 1.17); *see also* BR 1364-66.

J.S.'s teacher when J.S. resided in the Spokane School District and participated in the homebound program for medically fragile students. BR 1017-19. Ms. Petersen's original plan was to move J.S. from his home without warning. Ms. Hayashi-Taisey suggested instead that J.S. be permitted to complete his normal school activities, after which his teachers, who knew him well, would tell him of the move and drive him to Peterson Place. BR 1021-22. When she did so, Ms. Hayashi-Taisey observed that J.S. was "visibly upset" and "distraught." BR 1022.

After the move to Peterson Place, Ms. Hayashi-Taisey no longer served as his teacher because he was in a different school district. BR 1018-19. She nevertheless remained in close contact with J.S. as his friend and advocate, visiting him more frequently than she did while she was teaching him. BR 1023-24. Ms. Hayashi-Taisey had no concerns about the quality of care he was provided at Peterson Place. BR 1035. Despite Ms. Hayashi-Taisey's close relationship with J.S. and her past assistance in easing a transition for J.S., Ms. Petersen did not consult Ms. Hayashi-Taisey before removing J.S. from Peterson Place and into hospice care. BR 1049-50.

On October 30, 2009, Ms. Petersen abruptly moved J.S. from Peterson Place Adult Family Home to Hospice House, a hospice facility. BR 74. Ms. Petersen had not consulted or informed J.S., or Ms. Hayashi-

Taisey, about the move. BR 1030-31; *see also* Ex. 86 at 134. Hospice House contacted Ms. Hayashi-Taisey the day of the move because J.S. was in extreme distress and they could not reach Ms. Petersen. BR 1031. When Ms. Hayashi-Taisey arrived at Hospice House, she observed that J.S. was extremely distressed by the move, causing him to scream and be disruptive. BR 1030-34. J.S. fully understood that hospice care was for terminally ill patients, which was a contributing factor to his distress. BR 1030-31. J.S.'s distress regarding the move was further exacerbated by the fact that he encountered his cousin, who was residing at Hospice House and was dying from the same neurological disease as J.S., a fact known to J.S. BR 1031. Moreover, Ms. Petersen did not arrange for J.S. to be moved with his reclining wheelchair, which acted as his "security blanket" and in which he preferred to spend substantial time. BR 1032, 1410. Ms. Hayashi-Taisey delivered J.S.'s wheelchair to Hospice House, and then remained with him until he went to sleep. BR 1032-33.

Ms. Petersen bases her unilateral decision to move J.S. into hospice care from Peterson Place on a note from J.S.'s physician, Vivian Moise, M.D. Ex. 54. By September 2009, Dr. Moise considered J.S. to be in the very terminal stages of his disease. Ex. 55. Dr. Moise indicated on October 29, 2009, that J.S. needed "24[-hour] care at Hospice House or a [skilled nursing facility]." Ex. 54. But Dr. Moise was not generally

concerned about the quality of care J.S. received at Peterson Place. BR 1198. Her concern was that J.S. required 24-hour awake care, not that she thought hospice was the only suitable service for him. Ex. 95. Dr. Moise believed Peterson Place provided excellent, loving care for J.S. and treated him like a family member. Ex. 95. Dr. Moise's recommendation to move J.S. was made to ensure he would receive 24-hour care. BR 1208-09. Dr. Moise would have approved having Peterson Place provide 24-hour care for J.S. in lieu of moving him to another facility, and would not have authorized a move had such care been arranged. BR 1200, 1234.

Even though Dr. Moise's concern was the availability of 24-hour awake care, Ms. Petersen did not explore more than one option for care of J.S. at this point. Ms. Petersen did not contact Heidi Peterson to arrange for 24-hour care for J.S. at Peterson Place. BR 884, 937. Ms. Petersen neither consulted with J.S. himself, nor with his friend Ms. Hayashi-Taisey. BR 1048-49.

Certified Professional Guardian Thomas Robinson succeeded Ms. Petersen as J.S.'s guardian on November 4, 2009. BR 746, 1162. At J.S.'s request, and with Dr. Moise's approval, Mr. Robinson moved J.S. back to his former residence at Peterson Place. BR 1164-65, 1209.

Mr. Robinson arranged with Peterson Place for 24-hour awake care for J.S. BR 937, 1165. J.S. died a month before the hearing. BR 1035.

2. Guardianship Of D.S.

D.S. was an elderly woman, less than a week away from her 86th birthday when Ms. Petersen was appointed as her guardian. Exs. 7, 10 at 1. D.S.'s granddaughter, Naomi Webb, placed D.S. in Peterson Place before Ms. Petersen was appointed guardian. BR 1010. Before moving to Peterson Place, D.S. was living with Ms. Webb but needed more care than Ms. Webb was able to provide. BR 1010.

D.S.'s family members and friends were actively involved with her care and well-being. Ms. Webb visited D.S. at Peterson Place about three times per week. BR 1011. D.S.'s daughter, Karin, visited her there periodically and telephoned daily from her home in California. BR 946-47. D.S.'s son, Terry, visited her at Peterson Place several times. BR 1005. Lori Feagan has been a friend of D.S and D.S.'s family for approximately 30 years. BR 968. Ms. Feagan visited D.S. at Peterson Place at least once per month, both on her own and with D.S.'s other son, Robert. BR 969. Ms. Feagan is a nurse practitioner, has a master's degree in nursing from Washington State University, and worked for 18 years as a critical care nurse. BR 967.

Ms. Petersen's proven violations of the standards of practice for certified professional guardians concerned three factual scenarios. The violation resulting in the most serious sanction concerned Ms. Petersen's decision to remove D.S. from Peterson Place. Ms. Petersen did not consult with or inform D.S.'s family members in advance of moving D.S. BR 952-53, 974, 1005-06, 1012-13, 1411-12. Either Ms. Petersen or her staff simply informed Heidi Peterson that D.S. was being removed because Peterson Place did not have a caregiver awake 24 hours a day. BR 880-81. Ms. Petersen did not request that Peterson Place provide 24-hour awake care. BR 881-82. Ms. Petersen did not inform D.S.'s family of the move for several hours, during which time the family members were concerned and upset. BR 825-26, 950-51.

Ms. Petersen maintained that she moved D.S. because of concerns about the quality of care at Peterson Place. D.S.'s family and friends had no concerns regarding the care D.S. was receiving at Peterson Place. BR 946-47, 977, 1005, 1012. According to Ms. Feagan, during her visits with D.S. at Peterson Place, D.S. was clean, well groomed, and interactive, appeared healthy, and had a bright affect. BR 977. Ms. Petersen submitted no medical testimony to establish any need for a move of D.S. Ms. Petersen testified that she did not consider the opinions of D.S.'s family regarding whether to move D.S. because they "hadn't

visited her in years,” and because her family’s opinions were “uninformed.” BR 1432. These statements were inaccurate, as D.S.’s family and friends visited regularly. *See supra* pp. 8-9; *see also* Ex. 86 at 134. D.S.’s family express frustration at Ms. Petersen’s unwillingness to communicate with them. Ms. Petersen exhibited disdain at the notion of consulting with D.S.’s family. BR 816-17 (Ex. 24a), 826, 831, 1411-12.

The other two scenarios relate to facts that occurred earlier, while D.S. resided at Peterson Place. One incident concerned the hospitalization of D.S. without timely notice to her family. With Ms. Petersen’s approval, Peterson Place sent D.S. to the emergency room for treatment due to a change in her condition. BR 876. D.S. was hospitalized for several days as a result. BR 876. After later learning of the hospitalization, Ms. Petersen did not inform the children of D.S. of the emergency room visit or the hospital stay. BR 948, 970. When D.S.’s family eventually learned that their mother had spent several days in the hospital without their knowledge, they began to explore replacing Ms. Petersen with another guardian. BR 972-73.

The third scenario related to an unreasonable delay by Ms. Petersen in obtaining replacement glasses for D.S. D.S. was an avid reader. BR 142; 874, 969-970. In August 2009, Ms. Webb requested that new glasses be obtained for D.S. because the lenses were scratched and

the frames were bent. BR 871-72, 1011-12. It took several months for Ms. Petersen to finally provide replacement glasses. BR 875, 1288-89, 1418.

A successor guardian was appointed for D.S. in March 2010, replacing Ms. Petersen. Ex. 48.

B. Establishment Of The Board And Procedural Background

This Court created the Certified Professional Guardianship Board by court rule. This Court appoints its members. GR 23. The Board's purposes are to establish "the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008 and prescribe[] the conditions of and limitations upon their activities." GR 23(a); *see also* RCW 11.88.020(1) (authorizing the judicial branch to establish certification requirements). This Court recently observed that, "[o]ut of the approximately 20,000 guardianship cases in Washington, courts appointed certified professional guardians (or certified professional guardian agencies) in approximately 3,400 cases." *In re Lamb*, 173 Wn.2d 173, 185, 265 P.3d 876 (2011). Along with oversight by the appointing court, the Board and its rules provide a mechanism for judicial oversight of professional guardians, who serve as the court's agents caring for incapacitated persons. GR 23(b).

The Board has adopted standards of practice to govern the conduct of professional guardians, creating both mandatory duties and discretionary authority for professional guardians. GR 23(c)(2)(ii); *Standards of Practice Regulations* (CPG Standards).³ The Board, through the Administrative Office of the Courts, receives grievances concerning alleged violations of the standards of practice. GR 23(c)(2)(viii).

The Board received several grievances against Ms. Petersen, prompting the Board's Standards of Practice Committee (SOPC) to investigate. That investigation included an evidentiary hearing conducted by the Spokane County Superior Court, the court that previously exercised jurisdiction over the underlying guardianship cases. Ex. 21. Commissioner Joseph Valente, a member of the SOPC, the Board's investigative committee, presided and took testimony from Ms. Petersen and other witnesses. Ex. 21; *see also* Disciplinary Regulation (DR) 506⁴ (authorizing the SOPC to seek statements and testimony during its investigation of grievances).

On the recommendation of the SOPC, the Board voted to file a Disciplinary Proceeding Complaint (Complaint) against Ms. Petersen.

³ The CPG Standards have been renumbered since the Complaint was filed in this case. This brief cites to them in the form in which they were applied to this case, and appear in the record in that form.

⁴ The Board's disciplinary rules are available online at http://www.courts.wa.gov/committee/?fa=committee.child&child_id=56&committee_id=117 (last visited July 9, 2013), and are reproduced in the record at BR 3-20.

Ex. 36 at 2. Commissioner Valente was on the Board and present at the meeting but abstained from this vote, due to his participation on the investigative committee. *Id.*; DR 512.4.4 (disqualifying members of the SOPC from participating in the Board's review of the case).⁵ Pursuant to the Complaint, Hearing Officer Roderick S. Simmons held an evidentiary hearing on the matter. BR 838-1471. After that hearing, Hearing Officer Simmons issued Findings of Fact, Conclusions of Law, and Recommendations to the Board for Action.⁶ BR 820-36.

The Board concluded that Ms. Petersen violated the Standards of Practice with regard to four events. First, Ms. Petersen moved J.S. from Peterson Place and into hospice care without consulting J.S. BR 832. This move caused J.S. severe distress. BR 832. Second, Ms. Petersen moved D.S. from Petersen Place without consulting D.S.'s family—and with the knowledge that D.S.'s family did not want her moved. BR 831. Third, Ms. Petersen failed to timely notify D.S.'s family that their mother had been taken to the emergency room and was hospitalized for several

⁵ Two of the Board's rules bore this number at the time, but can be distinguished in context. The next rule in sequence disposes of another of Ms. Petersen's arguments. She points out that, due to her past membership on the Board, a number of its members recused from her case. The Board's rules are clear however, that recused members do not count toward a quorum requirement. DR 512.4.5.

⁶ For ease of reference, the Findings of Fact, Conclusions of Law, and Recommendations to the Board for Action are attached as Appendix A.

days. BR 831. Fourth, Ms. Petersen failed to timely provide replacement glasses to D.S., an avid reader. BR 830.

Based on his findings, the hearing officer characterized Ms. Petersen's violations of the standards of practice as "involving the duty to actively seek out information from other people, including the incapacitated person, to enable the Guardian to make appropriate care and residential placement decisions in order to enhance the well-being of the incapacitated person." BR 833. "This is a paramount duty of any Guardian." BR 833. The hearing officer recommended that Ms. Petersen's professional guardian certification be suspended for 12 months. BR 835. He also recommended that Ms. Petersen, for a period of 24 months after her suspension, at her cost, be required to obtain consultation from a qualified certified professional guardian to review any decision and the process followed regarding the residential relocation of any incapacitated person for whom Ms. Petersen is the guardian, in advance of the relocation. BR 835-36.

The Board adopted the hearing officer's Recommendations to the Board in their entirety. BR 1616-17. Commissioner Valente was no longer a member of the Board at the time of this vote. BR 1616-17. The

Board then petitioned this Court for review of this matter, as required by DR 512.4.4.⁷

IV. ARGUMENT

A. Standard Of Review

This Court reviews decisions of the Board recommending the suspension or decertification of a professional guardian upon the record compiled before the Board, without considering new evidence. DR 513.2. This Court should do so under the same standard of review applicable to attorney discipline cases. Like members of the bar, certified professional guardians are officers of the court, performing a function under judicial supervision. *In re Lamb*, 173 Wn.2d at 190. Just as members of the bar practice pursuant to judicial supervision, disciplinary proceedings against certified professional guardians are heard before a judicial branch board, with judicial review proceeding directly to this Court. GR 23; DR 513.

This Court upholds challenged findings of fact in attorney discipline cases “as long as they are supported by substantial evidence.” *In re Disciplinary Proceeding Against McGrath*, 174 Wn.2d 813, 818, 280 P.3d 1091 (2012). “Substantial evidence exists if a rational, fair-minded person would be convinced by it. Even if there are several reasonable

⁷ Ms. Petersen accuses Board members of attempting to preclude her appointment as a guardian while this case was pending in this Court. Petersen Opening Br. at 13. She cites no facts for this allegation, and none are presented in the record.

interpretations of the evidence, it is substantial if it reasonably supports the finding.” *Id.* This Court gives “great weight to the hearing officer’s findings of fact, especially where the veracity of witnesses is concerned.” *Id.* A court accepts a fact finder’s determinations of witness credibility and the weight to be given to reasonable but competing inferences. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.2d 453 (2011).

This Court reviews conclusions of law de novo and ensures they are supported by the findings of fact. *In re Disciplinary Proceeding Against Conteh*, 175 Wn.2d 134, 143, 284 P.3d 724 (2012). The Board’s recommended sanction should be entitled to “serious consideration” before this Court, because of the Board’s unique experience and perspective regarding the standards of practice applicable to professional guardians. *See id.* (noting the experience and perspective regarding attorney discipline of the bar’s disciplinary board).

B. The Board’s Conclusions That Ms. Petersen Violated The Standards Of Practice Are Supported By Substantial Evidence And By The Law

1. This Board’s Findings Of Fact Are Verities Because Ms. Petersen Failed To Assign Error

Ms. Petersen contends that the Board erred in both fact and law, but fails to assign error to any of the hearing officer’s findings of fact. Petersen Opening Br. at 2, 37-42. “It is incumbent on counsel for the appellant to present argument to the court why specific findings of fact

'are not supported by the evidence and to cite to the record to support that argument.'" *In re Disciplinary Proceeding Against Kamb*, 2013 WL 3761311, at *3 (Wash. July 18, 2013) (quoting *In re Disciplinary Proceeding Against Haskell*, 136 Wn.2d 300, 311, 962 P.2d 813 (1998)); *see also* RAP 10.3(g). "It is not sufficient for [Ms. Petersen] to merely argue [her] version of the facts while ignoring the testimony of other witnesses," as Ms. Petersen does. *In re Discipline of Marshall*, 167 Wn.2d 51, 67, 217 P.3d 291 (2009).

The hearing officer's findings of fact are therefore verities on appeal. *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 898, 232 P.3d 1095 (2010). If this Court nonetheless addresses her arguments, the findings of fact are supported by substantial evidence.

2. The Board's Findings And Conclusions Are Supported By Substantial Evidence And By The Law

The Board found, based on the hearing officer's findings of fact and conclusions of law, that Ms. Petersen committed four violations of the CPG standards. BR 829-33. Each violation is supported by substantial evidence in the record, and by the law.

a. Ms. Petersen Violated CPG Standards 401.5, 401.9, 401.12, 401.15, And 404.5 By Moving J.S. From Peterson Place Adult Family Home And Into Hospice House

The Board concluded that Ms. Petersen's move of J.S. from Peterson Place into hospice violated five standards of practice. BR 832. These standards of practice are set forth in full in Appendix B. The Board found that in moving J.S., Ms. Petersen (1) failed to protect his personal interests and foster his growth, independence and self reliance (CPG Standard 401.5); (2) failed to cooperate with and consider the views of J.S. and his friend, Ms. Hayashi-Taisy (CPG Standard 401.9); (3) failed to defer to J.S.'s own autonomous capacity to make decisions (CPG Standard 401.12); (4) did not base her decision on in-person contact with J.S. (CPG Standard 401.15); and (5) failed to select a residential placement for J.S. that would enhance his quality of life (CPG Standard 404.5). BR 832.

Substantial evidence supports the Board's conclusions. The Board found that Ms. Petersen "showed no concern for the opinion or interest of J.S. in her decision to move him to Hospice House." BR 832. She simply moved J.S. on her own accord, despite knowing that his earlier move into Peterson Place had caused J.S. to become upset and distraught. BR 1022. And when Ms. Petersen moved J.S. into hospice, J.S. understood the implication that this meant he was about to die. BR 1030-31.

Encountering his cousin at hospice, who was dying of the same condition in the next room, made matters worse. BR 1031. And Ms. Petersen moved J.S. without his wheelchair, which acted as his “security blanket.” BR 1032, 1410; *see* CPG Standard 401.5. Ms. Petersen showed no concern for J.S.’s reaction, leaving it to Ms. Hayashi-Taisey to comfort him in his distress. BR 1032-33.

Ms. Petersen’s defense to this substantial evidence relies almost entirely on Dr. Moise’s recommendation that J.S. needed 24-hour care. BR 766. But J.S. had the right to refuse placement in hospice. RCW 7.70.065(1)(c) (requiring Ms. Petersen to “first determine in good faith that [J.S.], if competent, would consent to the proposed health care”); *see also* CPG Standard 402.1. Additionally, “RCW 11.92.190 prevents any person, whether competent or not, from being placed against their will in a residential treatment facility unless they have been involuntarily committed under [state law].” *Raven v. Dep’t of Soc. & Health Servs.*, 2013 WL 3761521, at *7 (Wash. July 18, 2013). Ms. Petersen blithely states that J.S. did not affirmatively object to the move to hospice. Petersen Opening Br. at 42. This argument ignores RCW 7.70.065’s requirement to obtain consent, and does not otherwise explain what his reaction of sobbing, screaming, and disruption might have signified. BR 1030-33. More importantly, Ms. Petersen had no way of knowing

whether J.S. objected to the move because—in direct violation of her duties as guardian—she failed to consult J.S. CPG Standard 401.12. Accordingly, Ms. Petersen cannot rely upon a doctor’s recommendation in moving J.S. into hospice, when J.S.’s reaction demonstrated his objection.

Moreover, Dr. Moise’s recommendation did not require Ms. Petersen to move J.S. out of Peterson Place. Dr. Moise’s recommendation was made to ensure he would receive 24-hour care, not out of any concern regarding the care being provided at Peterson Place. BR 1208. In fact, Dr. Moise would have approved having Peterson Place provide 24-hour care for J.S. in lieu of moving him to another facility, and would not have authorized a move had such care been arranged. BR 1200, 1234. Ms. Petersen “had a duty to research and evaluate residential placement alternatives.” *Raven*, 2013 WL 3761521, at *11. Unfortunately, Ms. Petersen failed to even attempt to arrange for such care, and instead hastily moved J.S., thereby causing him considerable, and avoidable, distress. Peterson Place could have provided 24-hour care had such care been requested, and in fact did so after the successor guardian asked for it. BR 937, 1165.

Ms. Petersen mischaracterizes the issue when she argues the law allows her to substitute her judgment. Petersen Opening Br. at 38-39. Ms. Petersen failed to adhere to the substitute judgment rule because she

did not even consider J.S.'s preferences. BR 1048-49; *Raven*, 2013 WL 3761521, at *7. But as Ms. Petersen acknowledged, J.S.'s condition did not prevent him from remaining cognizant and capable of expressing his needs and opinions. BR 1024, 1048-49, 1393-94. Ms. Petersen should have discussed the move with J.S. to determine his preference. *In re Guardianship of Ingram*, 102 Wn.2d 827, 841, 689 P.2d 1363 (1984). Ms. Petersen was required to defer to his autonomous capacity to make decisions. CPG Standard 401.12. She was required to research and evaluate residential placement alternatives. *Raven*, 2013 WL 3761521, at *7. She was required to conduct sufficient in-person visits to judge his needs. CPG Standard 401.15; *see also Raven*, 2013 WL 3761521, at *8 (finding the absence of such visits "troubling"). She was required to select a residential placement which enhanced his quality of life, rather than depositing him into hospice to face the fear of imminent death. CPG Standard 404.5. For these reasons, substantial evidence in the record supports the Board's conclusions.

b. Ms. Petersen Violated CPG Standards 401.9 And 402.1 By Moving D.S. From The Peterson Place Adult Family Home

The Board concluded that Ms. Petersen's move of D.S. out of Peterson Place violated two standards of practice. CPG Standard 401.9 required Ms. Petersen to cooperate with and carefully consider the views

of D.S.'s relatives and friends who were knowledgeable about her. CPG Standard 402.1 required Ms. Petersen to properly exercise substituted judgment on behalf of D.S., including making reasonable efforts to ascertain and give weight to D.S.'s preferences.

Substantial evidence supports these conclusions, because Ms. Petersen simply moved D.S. on her own. "There was a complete lack of meaningful discussion with D.S.'s involved family members or with the Peterson Place staff regarding this move or the basis for it." BR 831. Although Ms. Petersen argues that there were care-related reasons for moving D.S., substantial evidence disclosed no medical need to move D.S. BR 825. The evidence provided at the hearing did not show that there was any care-related need to move D.S. BR 825. "D.S.'s family members were upset and concerned that their mother had been moved and they could not contact anyone who had information about her condition or location." BR 831. Notably, Ms. Petersen "was generally dismissive of the family members in her dealings with them." BR 831. Ms. Petersen testified that she knew that D.S.'s family did not want her moved, but dismissed their views with the statement that the family hadn't visited her in years. BR 1411. D.S.'s family was in fact actively involved in her care and called and visited regularly. *See supra* pp. 8-9. But Ms. Petersen dismissed the family's views as "uninformed." BR 1432.

Ms. Petersen defends her unilateral decision to move D.S. as a reasoned application of the substituted judgment rule, set forth in CPG Standard 402.1. This Court first addressed the substituted judgment rule in *In re Guardianship of Ingram*, 102 Wn.2d at 839-40, and more recently further elucidated it in *Raven*, 2013 WL 3761521. A guardian's goal, in making a substituted judgment on behalf of a ward, "is to do what the ward would do, if she were competent to make the decision." *In re Ingram*, 102 Wn.2d at 838; *see also Raven*, 2013 WL 3761521, at *6.

Given her condition, consultation with D.S. about the move might not have been dispositive, but Ms. Petersen was nonetheless required to make a good faith determination of where D.S. would have chosen to live. CPG Standard 402.1. The standards of practice obligated Ms. Petersen to do this by considering "the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person." CPG Standard 401.9. But Ms. Petersen made no effort to consult D.S.'s family or friends, despite the fact that they were available to her and actively involved in D.S.'s life. BR 952-53, 974, 1005-06, 1012-13, 1411-12. Ms. Petersen's failure to consult amounts to no effort at all to comply with the substituted judgment standard. *See Raven*, 2013 WL 3761521, at *7 (discussing the guardian's considerations in applying the substituted judgment rule).

Ms. Petersen failed to establish that she had a medical reason for moving D.S. BR 825. D.S. was receiving proper care at Peterson Place, and substantial evidence supports the conclusion that no need relating to 24-hour care justified the move of D.S.⁸ Ms. Petersen violated the substitute decision rule as set forth in *Ingram* and *Raven* by failing to consult D.S.'s family to determine what D.S. would have preferred.

c. Ms. Petersen Violated CPG Standards 401.9 And 402.1 By Failing To Inform The Family Of D.S. That D.S. Had Been Transported To The Emergency Room And Hospitalized

The Board concluded that Ms. Petersen violated CPG Standards 401.9 and 402.1 by failing to inform the family of D.S. that D.S. had been transported to the emergency room and hospitalized. CPG Standard 401.9 required Ms. Petersen to consider the views of others, including D.S.'s family and friends, when making decisions for D.S. CPG Standard 402.1 states the substituted judgment rule, requiring Ms. Petersen to "make reasonable efforts to ascertain the incapacitated person's historic preferences." App. B.

⁸ Ms. Petersen implies, without citation to the record, that D.S. and J.S. may have died from complications of urinary tract infections if she had not moved them from Peterson Place. Petersen Opening Br. at 39, 42. Ms. Petersen failed at hearing to produce medical evidence to support this contention. Lori Feagan, a nurse who had worked for 18 years in critical care, was acquainted with D.S.'s medical history and testified that D.S. was not diagnosed with a urinary tract infection except for an October 2009 incident. BR 991. Dr. Moise testified she had no concerns about the quality of the care being provided to J.S. at Peterson Place, and provided no testimony regarding J.S. having urinary tract infections. BR 1198; Ex. 95; BR 946-47, 977, 1005, 1012.

Ms. Petersen did not promptly inform the family of either the emergency room visit or the hospital stay. BR 948; 970. It was this incident that prompted the family, when they eventually learned of it, to explore replacing Ms. Petersen as guardian. BR 972-73. Ms. Petersen's failure to consult them and properly exercise substituted judgment on D.S.'s behalf fully justified their concern, and the Board's conclusion.

d. Ms. Petersen Violated CPG Standards 401.9 And 402.1 By Failing To Timely Obtain New Glasses For D.S.

Finally, the Board concluded that Ms. Petersen violated CPG Standards 401.9 and 402.1 with regard to the length of time it took to obtain replacement glasses for D.S. Based on D.S.'s clear interest in reading, Ms. Petersen either knew or was required to take reasonable efforts to ascertain that reading was an important activity to D.S. that would be impaired by damaged glasses. BR 142, 969-70; CPG Standards 401.9, 402.1. Yet Ms. Petersen "exhibited little enthusiasm for completing the steps necessary to facilitate this activity of daily living that is so enjoyed by D.S." BR 830. Ms. Petersen minimized the need for new glasses, commenting that only one lens was scratched. BR 1288. She obtained new glasses for D.S., but took months in doing so. BR 875. This violated Ms. Petersen's duty to determine D.S.'s preferences in consultation with her friends and family.

3. The Board's Penalties Are Appropriately Tailored To The Violations

A one-year suspension of Ms. Petersen's certification is fully warranted in light of her violations of the Standards of Practice. The Board has adopted a rule setting forth guidance as to the appropriate level of sanction that is appropriate for certain misconduct. Pursuant to DR 515.2.2.1, a suspension is appropriate when a guardian engages in "professional conduct incompatible with the Standards of Practice that causes injury or potential injury to a party or the public." Aggravating and mitigating factors are considered when imposing sanctions, including suspension.⁹ DR 515.1.4.

The hearing officer's recommendation to suspend Ms. Petersen was specifically based on her violations of the CPG Standards recounted above. BR 835. The hearing officer properly concluded that Ms. Petersen's actions caused actual, significant injury to J.S., D.S., and D.S.'s family. BR 833. The hearing officer also properly concluded that aggravating factors existed rendering a lesser sanction inappropriate, and found a lack of mitigating factors in her favor. BR 833-834.

Ms. Petersen argues that the sanction of suspension is not appropriate because "the punishment does not fit the crime," but fails to

⁹ A copy of DR 515.1.4, setting forth aggravating and mitigating factors, is attached as Appendix C.

address whether DR 515.2.2.1 was improperly applied by the Board. This Court recognizes that a disciplinary board “is ‘[t]he only body in the state to consider the full spectrum of disciplinary matters from the most trivial to the most serious.’” *In re Disciplinary Proceeding Against Rodriguez*, 2013 WL 3761513, at *7 (Wash. July 18, 2013) (quoting *In re Disciplinary Proceeding Against Noble*, 100 Wn.2d 88, 94, 667 P.2d 608 (1983)). “For this reason, we provide substantial deference to the sanction recommended by the Board, and we do not ‘lightly depart’ from this recommendation.” *Id.* (citing *In re Noble*, 100 Wn.2d at 94). Absent specific reasons to adopt a different sanction, this Court should adopt the sanction recommended by the Board. *Id.*

One of the central functions of a guardian is to ensure that the incapacitated ward is treated as a person whose wishes are followed and to provide individualized care. CPG Standards 401.12, 402.1. “The guardian’s duties include the responsibility ‘to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person’s freedom and appropriate to the incapacitated person’s personal care needs, [and to] assert the incapacitated person’s rights and best interests.’” *In re Lamb*, 173 Wn.2d at 190 (quoting RCW 11.92.043(4)). Ms. Petersen ignored the wishes of the wards and their families, and took it upon herself to move the wards. Substantial evidence in the record

shows a pattern by which Ms. Petersen avoids even consulting her wards, and shows clear disdain for the views of involved and knowledgeable friends and family. Such behavior justifies a substantial sanction.

Throughout the disciplinary proceeding, Ms. Petersen has repeatedly dismissed the seriousness of the allegations against her, and now argues that the allegations “boil down to miscommunications between family members and care providers.” Petersen Opening Br. at 43. Ms. Petersen’s inclination to abdicate from her duties as a guardian is evidenced by her testimony at hearing:

Q: Yes or no, did you specifically ask Heidi Peterson to provide 24-hour awake-at-night staff?

A: I don’t believe that I specifically asked her, but she knew. And I don’t think it was—*I don’t think, as a guardian, I’m supposed to evaluate the care of each resident.* That’s up to the doctors and the nurses and the physical therapist to provide that. So she was notified of that by all of them.

BR 1409 (emphasis added). Other aggravating factors considered by the hearing officer included: Ms. Petersen’s substantial experience as a guardian, including her service on the Board, from which she should have been aware of her obligations under the CPG Standards; her record of prior discipline (Ex. 76); and the vulnerability of D.S. and J.S. BR 833-34. Given her violations of the Standards of Practice, the injury she caused to J.S., D.S., and D.S.’s family, and the relevant aggravating

factors, the Board's decision to suspend Ms. Petersen should not be disturbed.

C. Oversight Of Certified Professional Guardians Through The Certified Professional Guardianship Board Is Consistent With Separation Of Powers And Due Process

1. The Separation Of Powers Doctrine Is Not Implicated Because Supervision Of Certified Professional Guardians Rests Entirely Within The Judicial Branch

Ms. Petersen's separation of powers argument is misplaced here because only one branch of government is involved—the judicial branch. Guardianships are by their nature are part of the judicial process. “Although governed by statute, guardianships are equitable creations of the courts and it is the court that retains ultimate responsibility for protecting the ward's person and estate.” *In re Lamb*, 173 Wn.2d at 184 (quoting *In re Guardianship of Hallauer*, 44 Wn. App. 795, 797, 723 P.2d 1161 (1986)). “The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court,” *Id.* at 190 (quoting *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 200, 570 P.2d 1035 (1977)).

Superior courts appoint guardians as part of judicial guardianship proceedings. RCW 11.88.010. Each individual case in which a guardian is appointed proceeds under active judicial oversight. *In re Lamb*, 173

Wn.2d at 190. This Court created the Board by court rule to oversee the certification of professional guardians and to “prescribe[] the conditions of and limitations upon their activities.” GR 23(a). This Court appoints members of the board. GR 23(c)(1)(i). By court rule, the Board is authorized to investigate grievances and to take disciplinary action for violations of its standards of practice. GR 23(c)(2)(viii). A guardian is entitled to an evidentiary hearing at which the Board bears the burden of proof. DR 510 (hearing procedure), 511.14 (burden of proof). A guardian is entitled to review by the Board itself of any decision by a hearing officer. DR 512. This Court automatically reviews any sanction of suspension or decertification of a professional guardian. DR 513.

Ms. Petersen, nonetheless, contends that the Board’s procedures for considering grievances against her violate the separation of powers. The certification of professional guardians, and supervision of their performance, is entirely a judicial branch process. Separation of powers principles are not implicated because the separation of powers doctrine “serves mainly to ensure that the fundamental functions of each branch remain inviolate.” *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009). Ms. Petersen fails to explain how the oversight of guardians, as officers of the court, through a judicial branch board created and appointed

by this Court, could intrude into the authority of the judicial branch to oversee the conduct of guardians as officers of the court.

The discipline of certified professional guardians is, again, similar to the discipline of attorneys. *See Washington State Bar Ass'n v. State*, 125 Wn.2d 901, 907, 890 P.2d 1047 (1995). Professional guardians function as officers of the court under direct court supervision. *See In re Lamb*, 173 Wn.2d at 190. As such, the regulation of guardianship practices “is within the inherent power of this court.” *See Graham v. Washington State Bar Ass'n*, 86 Wn.2d 624, 631, 548 P.2d 310 (1976) (discussing the court’s role of regulating the practice of law). Just as with regard to the practice of law, “it is the duty of this court to protect the public from the activity of those who . . . may cause injury” when caring for the affairs of incapacitated persons. *Cultum v. Heritage House Realtors, Inc.*, 103 Wn.2d 623, 627, 694 P.2d 630 (1985).

Ms. Petersen’s approach is to describe various functions of the Board as executive, legislative, or judicial, and to conclude from this that separation of powers must be involved. She characterizes, for example, the Board’s authority to establish standards of practice for guardians as legislative, and argues that it therefore cannot be combined in the same body with enforcement of those standards. The promulgation of rules within the judicial branch governing the practice of officers of the court is

inherently within the judicial authority. *Cf. Waples v. Yi*, 169 Wn.2d 152, 158, 234 P.3d 187 (2010). It is not unusual in the administrative context for the same body to establish standards to govern the practice of a profession and to enforce those standards. *See, e.g.*, RCW 18.71.002 (describing the purposes of the medical quality assurance commission as both establishing and enforcing qualifications of physicians).¹⁰

The primary authority Ms. Petersen relies on does not support her argument, and has no application to this case. Petersen Opening Br. at 21-24 (discussing *State v. Simmons*, 152 Wn.2d 450, 98 P.3d 789 (2004)). Rather, that case addressed whether a particular statute unconstitutionally delegated legislative authority to an executive branch department. *Simmons*, 152 Wn.2d at 452. No such delegation of authority from the legislature to the executive—or indeed from any branch to any other—is at issue in the present case.

The Board's procedures do not implicate separation of powers principles. Certified professional guardians function as officers of the court pursuant to judicial appointment. This Court established the Board by court rule to establish and enforce standards of practice. This matter

¹⁰ The record contradicts Ms. Petersen's assertion that the Board did not provide public notice of the rules under which her case proceeded. Ex. 36 at 2 (noting that rule changing the burden of proof was posted for comment).

accordingly proceeded entirely within the judicial branch, and none of the three branches of government encroached on the functions of any other.

2. The Board's Procedures Satisfy Due Process

All of the requirements set forth in *Simmons* and *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) as necessary procedural safeguards to control the Board's exercise of discretion are present. In considering such due process concerns, courts balance "(1) the private interest to be protected, (2) the risk of an erroneous deprivation of that interest by the government's procedures, and (3) the government's interest in maintaining the current procedures." *Simmons*, 152 Wn.2d at 456 (citing *Mathews*, 424 U.S. 319). *Simmons* concerned an administrative process that ultimately resulted in defining certain conduct as criminal, which gives rise to due process concerns not presented here. *Simmons*, 152 Wn.2d at 457. But even if *Simmons* applied, the Board provides all three of the procedural safeguards found sufficient there.

First, the *Simmons* court noted that in that case, "the defendant was entitled to a second look at agency action through administrative channels." *Simmons*, 152 Wn.2d at 457. The Board's rules specifically permitted Ms. Petersen to seek review of the hearing officer's preliminary decision by the Board itself. DR 512.2. She did so. BR 1545-90.

Second, judicial review was available. *Simmons*, 152 Wn.2d at 457. The Board's rules call for automatic Supreme Court review of any recommendation for suspension or decertification.¹¹ DR 513.2. Ms. Petersen seems to argue that judicial review must be available in the superior court, but offers no reason why review by this Court does not suffice. Petersen Opening Br. at 26; see *In re Conteh*, 175 Wn.2d 134, 143, 284 P.3d 724 (2012) (discussing Supreme Court review in attorney discipline cases).

Third, Ms. Petersen was afforded procedural safeguards. Ms. Petersen was on notice of the standards of practice to which she was subject. DR 501.1. She was provided with a copy of the grievances and complaint against her, and afforded an opportunity to respond. DR 504.5, 510.1; BR 820. Ms. Petersen was represented by counsel. DR 509. Ms. Petersen was provided the opportunity to subpoena witnesses and to pre-hearing discovery. DR 511.9, 511.10. Her counsel questioned the witnesses called to testify, and called additional witnesses on behalf of Ms. Petersen. See generally BR 838-1471 (transcript of hearing). The Board staff bore the burden of proof at hearing. DR 511.14.

¹¹ Ms. Petersen claims that she obtained this judicial review "[o]nly by petitioning this Court for discretionary review" (Petersen Opening Br. at 23), but the Board petitioned this Court automatically without any request by Ms. Petersen. BR 1-2. While the Board's rules do not automatically call for briefing and oral argument before this Court, DR 513.2, this case illustrates the fact that briefing and argument are available in the appropriate case upon request.

Ms. Petersen contends that the Board did not provide her the necessary procedural safeguards based on her speculation that the hearing officer was biased against her. Petersen Opening Br. at 30-31. The record does not bear out Ms. Petersen's attribution of bias to the hearing officer. See *In re Disciplinary Proceeding Against Starczewski*, 2013 WL 3761514, at *5 (Wash. July 18, 2013) (declining to find bias on the part of a hearing officer without citation to authority). The hearing officer, in fact, *ruled in favor of Ms. Petersen* on numerous charges against her. The hearing officer flatly rejected numerically more charges against Ms. Petersen than he sustained. Specifically, the hearing officer rejected:

- All charges levied against Ms. Petersen relating to her guardianship of E.R. BR 830.
- The portion of a grievance concerning D.S. relating to the failure to return a phone call. BR 831.
- The portion of a grievance concerning J.S. alleging that Ms. Petersen had failed to procure him adequate schooling. BR 831.
- The allegation that Ms. Petersen removed D.S. and J.S. from Peterson Place in retaliation against the owner of Peterson Place. BR 832.
- All of the charges in a grievance alleging that Ms. Petersen caused the Department of Social and Health Services to stop payments to Peterson Place. BR 833.

Perhaps most tellingly, the relief originally sought was Ms. Petersen's complete decertification. BR 804. The hearing officer denied that relief, recommending instead that Ms. Petersen be suspended

for a year. BR 835. These are hardly the signs of a hearing officer biased against Ms. Petersen, or who feels he must sustain every allegation in order to continue being appointed and paid.

Although not properly a part of the record, Ms. Petersen attaches a copy of the Board's contract with the hearing officer to her brief and asserts that it gives the hearing officer a financial incentive to rule against her. This Court should reject consideration of this extra-record material out of hand. *Ripley v. Lanzer*, 152 Wn. App. 296, 325 n.125, 215 P.3d 1020 (2009). Even if this contract is considered, it does not show bias or unfairness. Ms. Petersen argues that because the hearing officer is compensated, "he has an interest in keeping the board happy." Petersen Opening Br. at 10-11. In the analogous context of an attorney disciplinary proceeding, this Court has previously held that the mere fact that a hearing officer is paid does not give rise to an inference of unfairness. *In re Marshall*, 167 Wn.2d 51, 69, 217 P.3d 291 (2009). The fact that the hearing officer is compensated "does not bias him any more than the salary paid to any judge that hears cases brought by the State of Washington." *Id.*

"The presumption of fairness for judges . . . applies to hearing officers in attorney discipline proceedings." *In re Discipline of King*, 168 Wn.2d 888, 904, 232 P.3d 1095 (2010). A party alleging bias on the part

of a hearing officer bears the burden of overcoming the presumption that a decision maker would properly and legally perform his or her duties. *Faghih v. Dep't of Health*, 148 Wn. App. 836, 843, 202 P.3d 962 (2009); *see also Magula v. Dep't of Labor & Indus.*, 116 Wn. App. 966, 972, 69 P.3d 354 (2003) (applying the presumption that an administrative tribunal will properly and legally perform its duties until the contrary is shown). A party claiming bias "is required to present specific evidence of a violation, not speculation." *See City of Lake Forest Park v. State*, 76 Wn. App. 212, 217, 884 P.2d 614 (1994).

In addition to being inconsistent with the record in this case that shows that the hearing officer did not uncritically accept the Board's complaint, Ms. Petersen's arguments are rooted in the unsupported notion that the Board has an interest in seeing every charge in every case upheld. This is wrong. *See Clausing v. State*, 90 Wn. App. 863, 875, 955 P.2d 394 (1998) (the fact that a board authorized the filing of charges does not suggest bias as to the board's later final decision on the merits of those charges). The Board is an adjudicative body whose interest lies in the proper enforcement of the standards of practice. There is, accordingly, no reason to assume that simply because the Board hires a hearing officer to conduct a hearing, that officer has an incentive to rule against any and all guardians against whom charges are alleged.

D. The Proceedings Before The Board Did Not Violate The Appearance Of Fairness Doctrine

The appearance of fairness doctrine applies to administrative tribunals acting in a quasi-judicial capacity when either an agency has employed procedures creating an appearance of unfairness, or when one or more members of the decision-making body has apparent conflicts of interest creating an appearance of unfairness or partiality. *City of Hoquiam v. Pub. Emp't Relations Comm'n*, 97 Wn.2d 481, 488, 646 P.2d 129 (1982). Ms. Petersen bears the burden of proving a violation of the doctrine by overcoming the presumption that the Board properly and legally performed its duties. *Faghih*, 148 Wn. App. at 843.

Combining investigative and adjudicative functions in the same body does not itself create an appearance of unfairness. *In the Matter of Johnston*, 99 Wn.2d 466, 479, 663 P.2d 457 (1983); *Nationscapital Mortg. Corp. v. State*, 133 Wn. App. 723, 759, 137 P.3d 78 (2006); *Clausing*, 90 Wn. App. at 874. Ms. Petersen does not contend to the contrary, agreeing that “something more” is necessary to show a violation of the appearance of fairness doctrine. She finds that “something more” in the notion that one Board member was biased against her (as well as reprising her arguments concerning the hearing officer). Petersen Opening Br. at 29-32. She alleges that an “antagonistic relationship” between herself and a

Board member, Commissioner Valente of the Spokane County Superior Court, “created a personal bias and prejudiced Commissioner Valente against [her].” Petersen Opening Br. at 30. Using such hyperbole as “unprecedented crusading” (*id.*), and “‘star chamber’ action” (*id.* at 9), she alleges that Commissioner Valente engaged in a meritless campaign to destroy her career. Ms. Petersen bore the burden of demonstrating, “tangible, actual bias to establish impermissible prejudgment.” *City of Lake Forest Park*, 76 Wn. App. at 219. “Prejudgment by a judge or a quasi-judicial decision maker is never presumed and must be affirmatively shown by the party asserting it.” *Id.*

The hearing officer concluded that the “evidence does not establish that Commissioner Valente is biased against [Ms. Petersen].” BR 829. Substantial evidence supports the hearing officer’s conclusion. Commissioner Valente did not initiate the grievances against Ms. Petersen. Rather, the grievances were filed by the owner of the Peterson Place Adult Family Home, and by the family of D.S.¹² As Ms. Petersen admits, Commissioner Valente did not vote on the motion to file charges against Ms. Petersen, and similarly did not vote on the Board’s final decision to adopt the hearing officer’s findings of fact,

¹² Ex. 1 (CPGB Grievance 2009-13, filed by D.S.’s son); Ex. 2 (CPGB Grievances 2010-005, 2010-006, and 2010-007, filed by the owner of Peterson Place); Ex. 3 (CPGB Grievance 2010-008, filed by D.S.’s son).

conclusions of law, and recommendation as to discipline against Ms. Petersen. Petersen Opening Br at 31. This is consistent with DR 512.4.4, which requires members of the SOPC to recuse from deciding the merits of the case. Moreover, Commissioner Valente had left the Board by the time the Board took its final vote on this matter. BR 1616-17.

Commissioner Valente was a member of the SOPC, the committee delegated the task of investigating grievances and making recommendations as to whether the grievance was supported by sufficient evidence to merit an adjudicative proceeding. Ex. 36. As part of that investigation, the Board referred the grievances against Ms. Petersen to the Spokane County Superior Court for inquiry. Ex. 45. Commissioner Valente conducted an evidentiary hearing as part of that inquiry. Ex. 21. This hearing, however, played no role in determining the merits of the charges against Ms. Petersen, occurring only as part of the pre-complaint investigation. The hearing officer disregarded Commissioner Valente's resulting letters and "made independent Findings of Fact and Conclusions of Law." BR 829. Nor did this hearing prejudice Ms. Petersen, because she was represented by counsel and the Board's rules clearly authorize requiring her testimony before the filing of a complaint. DR 504.6, 506.1.2. The simple fact that somebody other than the eventual decision maker conducted an investigation does not prejudice Ms. Petersen.

The hearing officer concluded that the “evidence does not establish that Commissioner Valente is biased against [Ms. Petersen].” BR 829. Ms. Petersen did not assign error to this finding, and it is thus a verity on appeal. In any event, substantial evidence supports the hearing officer’s conclusion.

Ms. Petersen’s claim that she developed an antagonistic relationship with Commissioner Valente while they both served as members of the Board raises nothing more than speculation, which the hearing officer rejected. As the hearing officer concluded, “[t]he transcripts from the hearing he conducted^[13] and the written opinion letters he issued^[14] demonstrate he acted fairly in all particulars related to the grievances.” BR 829.

Commissioner Valente participated only in the initial investigation and recommendation to file charges, and not in the Board’s actual decisions to file a complaint or to adopt the hearing officer’s preliminary decision. Thus, there is no violation of the appearance of fairness doctrine. *See In the Matter of Stockwell*, 28 Wn. App. 295, 299, 622 P.2d

¹³ Before this case arose, Commissioner Valente conducted a hearing in an unrelated guardianship matter in which he ruled partially in favor of Ms. Petersen. The transcript, including Commissioner Valente’s oral ruling, is in the record as Exhibits 33 and 34. The transcript of the hearing he conducted as part of the pre-complaint investigation in this case is set forth as Exhibit 21.

¹⁴ After the pre-complaint investigative hearing, Commissioner Valente wrote letters to those involved setting forth his conclusions. *See Exs.*, 43, 44, 65, 66, 69, 70. As noted, the hearing officer disregarded these letters. BR 829.

910 (1981) (member of a multi-member board who did not participate in the hearing or final decision of a matter, but who testified at the hearing, did not violate the appearance of fairness doctrine). All decisions on the merits of this case were made by other Board members. This Court “must presume [that those] board members acted properly and legally performed their duties until the contrary is shown.” *In re Johnston*, 99 Wn.2d at 479.

Ms. Petersen’s claim of a violation of the appearance of fairness doctrine fails because it is rooted in the notion of a vendetta against her by a Board member who did not even participate in the Board’s decisions on the merits of this case. This claim is unsupported in the record and must be rejected.

E. The Board Properly Applied A Preponderance Of The Evidence Standard, As Specified In Its Rules

Ms. Petersen’s arguments about the burden of proof relate, at most, to one of the four charges proven against her. The hearing officer found that three out of the four charges proven against Ms. Petersen were proven not only by the preponderance of the evidence, but alternatively by clear and convincing evidence as well. BR 830 (charge that Ms. Petersen failed to timely obtain new glasses for D.S. was proven by both the preponderance of the evidence and, alternatively, by clear and convincing evidence); BR 831 (same with regard to the charge that Ms. Petersen

moved D.S. from Peterson Place without fulfilling her duties relating to substituted decision making); BR 832 (same with regard to the charge that Ms. Petersen moved J.S. from Peterson Place into hospice care without fulfilling her duties relating to substituted decision making). Only with regard to a single charge, that Ms. Petersen failed to inform the family of D.S. that D.S. had been transported to the emergency room and hospitalized, did the hearing officer base his conclusions solely upon the preponderance standard. BR 831. The Board did not base its decision to suspend Ms. Petersen on the charge relating to D.S.'s hospitalization, finding that the appropriate sanction for that charge was prohibiting Ms. Petersen from accepting new cases for 3 months. BR 835.

1. The Burden Of Proof By A Preponderance Of The Evidence Satisfies Ms. Petersen's Due Process Interest

The Board's rules establish that "[t]he Board bears the burden of establishing misconduct warranting disciplinary action by a preponderance of the evidence in all cases." DR 511.14. "The preponderance standard traditionally applies in licensure revocation proceedings regardless of the occupation at issue." *Hardee v. State*, 172 Wn.2d 1, 23, 256 P.3d 339 (2011) (Madsen, C.J., concurring). "Absent 'countervailing constitutional constraints,' the United States Supreme Court has found a preponderance of the evidence to be sufficient in proceedings to revoke an occupational

license.” *Id.* at 24 (quoting *Steadman v. Sec. & Exch. Comm’n*, 450 U.S. 91, 95, 101 S. Ct. 999, 67 L. Ed. 2d 69 (1981)).

“The function of a standard of proof . . . is to ‘instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular kind of adjudication.’” *Hardee*, 172 Wn.2d at 7-8 (lead opinion) (quoting *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)). In this case, despite the fundamental interest in protecting incapacitated persons from misconduct committed by the very person entrusted by the superior court to protect their interests, Ms. Petersen contends that due process requires that allegations that a certified professional guardian violated the standards of practice be proven by clear and convincing evidence. Petersen Opening Br. at 33-37. She is wrong.

Professional guardians are entrusted with the fiduciary duty to “work for the individualized best interests of each ward.” *In re Lamb*, 173 Wn.2d at 191. “[G]uardians are called upon to manage wards’ property interests, but also to make vital decisions regarding medical care and end-of-life preferences.” *Id.* at 185. Public policy, as established by the legislature, stresses that guardians perform their duties to “protect the liberty and autonomy” of incapacitated persons “to enable them to

exercise their rights under the law to the maximum extent, consistent with the capacity of each person.” RCW 11.88.005.

The Board relied upon *Hardee* as authority for establishing a preponderance standard in guardianship cases. Ex. 36. *Hardee* supports this action.¹⁵ *Hardee*, 172 Wn.2d at 15 (lead opinion; overruling *Ongom v. Dep’t of Health*, 159 Wn.2d 132, 148 P.3d 1029 (2006)). In *Hardee*, the Court held that the three-factor due process test established in *Mathews*, 424 U.S. 319, was satisfied by a preponderance standard in revoking a childcare license. *Hardee*, 172 Wn.2d at 10-12 (lead opinion); *id.* at 24 (Madsen, C.J., concurring). The same conclusion applies here.

This Court found the first of the *Mathews* factors to be satisfied after considering the nature of the licensee’s interest in a childcare license. *See Hardee*, 172 Wn.2d at 15-16 (lead opinion); *see also id.* at 24 (Madsen, C.J., concurring). In guardianship cases, a heightened burden of proof would accomplish little but to make it more difficult for the State to protect the vulnerable population of incapacitated persons who depend upon their guardians for their care needs. Ms. Petersen’s interest in her guardianship certification is no greater than that of the child care license at

¹⁵ Ms. Petersen suggests, without citation to any evidence in the record, that the Board did so as part of its alleged vendetta against her. A more straightforward explanation is that the Board took this action in response to this Court’s decision, shortly after *Hardee* was decided. *See* Ex. 36 (action taken at September 12, 2011, Board meeting); *Hardee*, 172 Wn.2d at 1 (*Hardee* decided July 7, 2011).

issue in *Hardee*. Certification as a professional guardian can be obtained with as little as a two-year associate's degree, combined with at least four years of work experience, and Ms. Petersen's interest is fully protected by a preponderance standard. GR 23(d)(iv).

Similarly, the second factor was satisfied in *Hardee* because “[i]t is unlikely that requiring the additional procedural safeguard of a different evidentiary standard is necessary to curtail erroneous deprivations of home childcare licenses.” *Hardee*, 172 Wn.2d at 11 (lead opinion). The safeguards this Court found sufficient in *Hardee* included:

[A]n unbiased tribunal, notice of the proposed action and the grounds asserted for it, an opportunity to present reasons why the proposed action should not be taken, the right to call witnesses, the right to know the evidence against her, the right to have a decision based only on the evidence presented, the right to counsel, the making of a record of the proceedings, public attendance of the proceedings, and judicial review of the proceedings.

Id. Each of those safeguards was provided in this case.

The State's interest in protecting vulnerable incapacitated persons is vital, thus satisfying the third and final *Mathews* factor. *Id.* at 12. Guardians bear a fiduciary duty to their incapacitated wards. *Raven*, 2013 WL 3761521, at *8. Incapacitated persons depend on them to fulfill their duties regarding fundamental aspects of their lives. *In re Lamb*, 173 Wn.2d at 185. The Board must be able to effectively oversee those

fiduciaries to whom the interests of this vulnerable population are entrusted. *Hardee*, 172 Wn.2d at 12 (lead opinion).

The lead opinion in *Hardee* noted a physician's license as an exception to the general rule that a preponderance standard is sufficient. *Hardee*, 172 Wn.2d at 13 (noting the unique role of physicians). Ms. Petersen attempts to equate her interest in her guardianship certification with that of a physician in a medical license. This comparison between a license to practice medicine and a certification as a professional guardian is strained at best. Accordingly, the preponderance standard fully protects Ms. Petersen's due process interest.

2. This Court Should Clarify That A Preponderance Of The Evidence Standard Sufficiently Protects The Due Process Rights Of Licensees By Overruling This Court's Decision In *Nguyen v. Dep't Of Health*

Ms. Petersen relies upon *Nguyen v. Department of Health*, 144 Wn.2d 516, 29 P.3d 689 (2001), for the notion that due process requires the higher clear and convincing standard to suspend her license. The lead and concurring opinions in *Hardee* provide a sufficient basis for distinguishing *Nguyen*, as described above. Even so, four justices in *Hardee* would have overruled *Nguyen*. *Hardee*, 172 Wn.2d at 26-27 (Madsen, C.J., concurring). The Court should do so now.

The continued application of *Nguyen* has had “the unfortunate effect of turning the selection of standards of proof for licensure deprivations into ad hoc, occupation-specific value judgments about the nature of the private interest at stake.” *Hardee*, 172 Wn.2d at 22 (Madsen, C.J., concurring); *see also Hardee*, 172 Wn.2d at 30 (Sanders, J., dissenting) (agreeing with the concern about value judgments regarding professions). In a recent example, the Court of Appeals construed *Nguyen* in light of *Hardee* to mean that the burden of proof in a licensure action depends upon “a distinction between professional licenses and other state licenses.” *Olympic Healthcare Servs. II, LLC v. Dep’t of Soc. & Health Servs.*, 2013 WL 3071344, *4 (Wash. Ct. App. June 19, 2013). This invites precisely the predicted “ad hoc, occupation-specific value judgments” that this Court should eschew. *Hardee*, 172 Wn.2d at 22 (Madsen, C.J., concurring). The Court of Appeals further read *Hardee* as continuing *Nguyen*’s requirement of a clear and convincing standard based in part on whether the license adheres to an individual or to a facility, requiring the higher standard when the license is individual in nature. *Olympic Healthcare*, 2013 WL 3071344, at *4. But the inquiry into the value of the license “should focus on objective measures to determine the value of the” license, and not on whether the license attaches to a natural person or some other entity. *Hardee*, 172 Wn.2d at 16 (lead opinion).

Courts of other states uniformly find the preponderance standard a sufficient measure for protecting the interests of license holders, even in the physician context. *See Hardee*, 172 Wn.2d at 24-25 (Madsen, C.J., concurring). “Although the United States Supreme Court has had occasion to consider a wide range of professions, it has never suggested that the nature of a profession affects the scope of the interest of those seeking to pursue it.” *Id.* at 25. Moreover, as illustrated by the recent *Olympic Healthcare* decision, “a rule that distinguishes between professional and nonprofessional licenses is untenable.” *Hardee*, 172 Wn.2d at 26 (Madsen, C.J., concurring).¹⁶

The standard of proof applicable to guardianship licensure actions makes little difference to the outcome of this case, because three of the four charges proven regarding Ms. Petersen were proven by evidence that satisfied the clear and convincing standard. Moreover, under this Court’s decision in *Hardee*, a preponderance standard sufficiently protects Ms. Petersen’s due process interest while permitting the state to protect a

¹⁶ The “clear preponderance” standard applied by this Court in attorney discipline cases is inapplicable to certified professional guardians. “‘Clear preponderance’ is an intermediate standard of proof . . . requiring greater certainty than ‘simple preponderance’ but not to the extent required under ‘beyond [a] reasonable doubt.’” *In re Disciplinary Proceeding Against Allotta*, 109 Wn.2d 787, 792, 748 P.2d 628 (1988). The Board’s rule establishes a simple preponderance standard. DR 511.14. The burden of proof adopted for attorney discipline cases does not originate from constitutional concerns, but from a discretionary policy decision. *In re Discipline of Little*, 40 Wn.2d 421, 430, 244 P.2d 255 (1952) (establishing the “clear preponderance” standard for attorney discipline cases in recognition of the court’s certification of the person’s “moral and professional standards” upon admission to the bar).

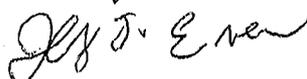
vulnerable population of incapacitated persons who depend upon their guardians for their essential needs. Finally, this Court should take this opportunity to overrule its incorrect and harmful decision in *Nguyen*, because it continues to sow confusion among the lower courts and invite arbitrary comparisons among licensed occupations.

V. CONCLUSION

The Board respectfully requests that this Court grant the Board's Petition For Order Of Suspension, and affirm the conclusion that Ms. Petersen violated the Standards of Practice applicable to certified professional guardians.

RESPECTFULLY SUBMITTED this 31st day of July 2013.

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APPENDIX A

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CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF:

LORI A. PETERSEN, CPG No. 9713,

CPGB NO. 2010-005, 2010-006
2010-007, 2010-008, 2009-013

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATIONS TO THE
BOARD FOR ACTION

A Hearing was held October 22, 2012 to October 24, 2012 before Roderick S. Simmons, Hearing Officer, the Certified Professional Guardian Board (hereinafter "Board") appearing through Robert M. McKenna, Attorney General, by Chad C. Standifer, Assistant Attorney General, and Lori A. Petersen, CPG No. 9713 (hereinafter "Respondent") appearing through her attorneys Helsell Fetterman LLP, by Michael L. Olver, Attorney at Law.

The Respondent was timely notified of the time and place of the Hearing in accordance with the Prehearing Conference Order and Notice of Hearing, dated June 12, 2012.

The Hearing Officer has considered the testimony of the witnesses appearing at the Hearing on behalf of each party, the Disciplinary Proceeding Complaint and the Notice to Answer, both dated April 25, 2012, the Answer of Respondent, dated May 25, 2012, Respondent's Legal Memorandum For Administrative Hearing, dated October 15, 2012, and the Board's Response to Respondent's Legal Memorandum for Administrative Hearing, dated October 19, 2012.

By Stipulation of the parties at the Hearing, the parties consolidated their respective Final Exhibit Lists as Exhibits 1-91 and agreed that said Exhibits were admitted; and said Exhibits have been considered by the Hearing Officer. The Hearing Officer further considered the documentary evidence admitted during the Hearing: Exhibits 24A, and 92-97.

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1 By way of a preliminary Motion, Respondent argued that the standard of proof in this matter
2 under Certified Professional Guardian Board Disciplinary Regulations (hereinafter "DR") 511.12
3 should be evidence found to be clear and convincing, not a preponderance of the evidence, which
4 latter standard was adopted by the Board November 14, 2011. The Hearing Officer determined the
5 change in the standard of proof was supported by the decision in *Hardee v. State*, 172 Wn.2d 1, 256
6 P.3rd 339 (2011), and denied the Motion.

I. FINDINGS OF FACT

8 1.1. Respondent, Lori Petersen, was certified as a Certified Professional Guardian on November
9 5, 2001, pursuant to General Rule 23, as CPG No. 9713. Exhibit 1A.

10 1.2. Respondent operates Empire Care and Guardianship and is the Guardian for about 60
11 individuals. Exhibit 13.

12 1.3. Respondent was a member of the Board from 2003 to 2009 (six year term) and served on the
13 Standards of Practice Committee (hereinafter "SOPC").

14 1.4. On December 1, 2009 the Board received a grievance from a family member regarding
15 Respondent's conduct in the case of the Guardianship of D.S., Spokane County Superior Court Case
16 No. 09-4-00115-6. On or about December 3, 2009 the SOPC opened a grievance against Respondent
17 under CPGB No. 2009-013. Exhibit 1B, 88.

18 1.5. On March 22, 2010 the Board received a grievance from Heidi Peterson, the owner and
19 operator of Peterson Place Adult Family Home, regarding Respondent's conduct in the following
20 cases:

21 Guardianship of E.R., Spokane County Superior Court Case No. 09-4-00294-2
22 Guardianship of D.S., Spokane County Superior Court Case No. 09-4-00115-6
23 Guardianship of J.S., Spokane County Superior Court Case No. 09-4-00177-6

24 On or about June 20, 2010 the SOPC opened grievances on these cases under CPGB No.
25 2010-007, 2010-006, and 2010-005, respectively. Exhibit 2, 86.

26 1.6. On April 15, 2010 the Board received a second grievance from a family member regarding
27 Respondent's conduct in the Guardianship of D.S. On or about June 20, 2010 the SOPC opened a
28 grievance against Respondent under CPGB No. 2010-008. Exhibit 3, 89.

1.7. Respondent testified that Spokane County Superior Court Commissioner Joseph F. Valente,
and member of the CPGB, took action to forward the grievances to the CPGB and to push the

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1 grievances forward. A hearing was held before Commissioner Valente in his court on July 15, 2010
2 regarding the grievances previously filed with the Board. Respondent appeared with her attorney,
3 James Woodard. Mr. Woodard examined witnesses and presented evidence on behalf of the
4 Respondent. Additionally the Commissioner questioned the Respondent at length without objection
5 by her counsel. Exhibit 21.

6 1.8. On July 26, August 10, and August 13, 2010, Commissioner Valente sent written opinion
7 letters to Mr. Woodard and others involved in the proceeding. Exhibit 43, 44, 66, 69.

8 1.9. Respondent testified that Commissioner Valente encouraged the filing of the various
9 grievances and the present Disciplinary Proceeding Complaint and otherwise retaliated against her
10 because, while she was a member of the CPGB and SOPC, she opposed a Guardianship Monitoring
11 Project initiated by Commissioner Valente. Respondent further testified that Commissioner Valente
12 is the reason she is facing the present Hearing.

13 1.10. On or about April 25, 2012 a Disciplinary Proceeding Complaint and Notice to Answer were
14 signed and subsequently served on Respondent by the Board.

15 1.11. On or about May 29, 2012 the Board received Respondent's Answer, dated May 25, 2012.

Guardianship of E.R.

16
17 1.12. Respondent was appointed Full Guardian of the Person and Estate of E.R. on May 12, 2009.
18 He was admitted to the Peterson Place Adult Family Home located at Gary Lane, Spokane, on May
19 28, 2009. The Agreement signed by the Respondent for his placement states that Peterson Place
20 does not provide 24 hour awake staff.

21 1.13. On July 18, 2009 E.R. manifested a significant change in his behavior, including aggressive
22 behavior towards staff and trying to leave. Heidi Peterson, the owner of Peterson Place, was out of
23 town on this date. Upon being informed by her staff of these problems she directed them to call 911
24 to transport E.R. for emergency care. Heidi Peterson notified Respondent of E.R.'s transfer to the
25 emergency room.

26 1.14. Heidi Peterson informed Respondent of her concerns regarding E.R.'s condition but allowed
27 him to return to Peterson Place, on July 18, 2009, at the insistence of Respondent. An unidentified
28 emergency room staff person informed Heidi Peterson that E.R. was ready to be returned to Peterson
Place.

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1 1.15. Later the same day E.R. again became agitated. Peterson Place staff reported to Heidi
2 Peterson that he was trying to climb walls and was swinging his walker at staff. Heidi Peterson
3 directed her staff to call 911 to, again, transport E.R. to the emergency room for treatment. On this
4 second visit E.R. was found to have a urinary tract infection and blockage. 1000ccs of urine were
5 drained from his bladder.

6 1.16. E.R. was hospitalized overnight and evaluated by a Community Mental Health Professional
7 (hereinafter "CMHP") and other medical providers. He was determined to be ready to be returned
8 to Peterson Place.

9 1.17. During the time encompassed by the second visit to the emergency room, Respondent
10 testified that the telephone kept ringing, with telephone calls from Heidi Peterson and the CMHP.
11 Respondent in her testimony manifested annoyance at these various telephone calls, testifying "I'm
12 trying to get ready for a triathlon."

13 1.18. Despite the assurances from the various medical providers regarding E.R.'s fitness to return
14 to Peterson Place, Heidi Peterson refused to permit his return. Respondent was insistent in her
15 conversations with Heidi Peterson that E.R. be allowed to return to Peterson Place even though Heidi
16 Peterson expressed her concerns regarding his condition and its effect on the safety and well-being
17 of staff and residents.

18 1.19. E.R. was not returned to Peterson Place and remained at the hospital for a period of time until
19 he could be placed elsewhere. He was ultimately placed at Alderwood Manor. Exhibit 6.

20 1.20. E.R. died August 18, 2009, aged 91. Exhibit 6.

Guardianship of D.S.

21
22 1.21. Respondent was appointed Full Guardian of the Person and Estate of D.S. on March 18,
23 2009. The Order was amended on March 24, 2009 to set a specific Bond. Exhibit 7, 8.

24 1.22. D.S. was placed at Peterson Place Adult Family Home, at E. Midway Rd, Colbert, WA, by
25 Naomi Webb, her granddaughter, on February 8, 2009 because Ms Webb could no longer provide
26 adequate care for D. S.

27 1.23. D.S. has family members and friends of family who were actively involved with her and
28 interested in her care and well-being.

1.24. Naomi Webb testified that she visited D.S. about three times per week. Karin Simpson-

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1 Schubert, daughter of D.S. testified that she visited periodically and telephoned daily. Lori Fagin,
2 testified that she is a friend of Robert, a son of D.S., has known her 30 years, and visited her at least
3 one time per month, alone or with Robert. Terry Simpson, son of D.S. testified that he visited her
4 several times. All testified they had no concerns regarding the care D.S. was receiving at Peterson
5 Place. Karin Simpson-Schubert has a Masters from Stanford University in physical therapy, and
6 works with children with developmental disabilities. Lori Fagin has a Masters from WSU in nursing
7 and is a critical care nurse.

8 1.25. In August 2009 Naomi Webb requested that new glasses be obtained for D.S. because the
9 glasses needed repair, the lenses were scratched, would fall out of the frame when cleaned, and the
10 frame was bent. D.S. is an avid reader. Heidi Peterson telephoned Respondent who approved the
11 request.

12 1.26. Heidi Peterson transported D.S. to Optic One for an eye exam. Heidi Peterson testified there
13 was no follow-up appointment because Optic One did not get payment from Respondent.
14 Respondent testified there was no follow-up because the Optometrist could not get appropriate
15 responses from D.S because of her dementia.

16 1.27. An Optic One employee telephoned Heidi Peterson because they had no response from
17 Respondent to telephone calls to the telephone numbers they had been provided. Heidi Peterson
18 gave them the telephone number of Naomi Webb, believing she may have additional contact
19 information. Thereafter Heidi Peterson received a telephone call from Respondent complaining
20 about the telephone calls she (Respondent) was receiving about the glasses. She further complained
21 that Heidi Peterson should not be discussing the eye exam and payment issues with family members.

22 1.28. D.S. received replacement glasses, after considerable delay, when Respondent obtained a
23 replacement prescription. Respondent and her case manager Kerri Sandifer testified they were told
24 by Peterson Place staff that Naomi Webb had been given the original prescription. Heidi Peterson
25 testified the prescription was always in D.S.'s file. Respondent testified the original glasses were
26 adequate because only one lens was scratched.

27 1.29. Heidi Peterson telephoned Respondent regarding a change in condition of D.S. Respondent
28 approved sending D.S. to the emergency room for treatment. D.S. was hospitalized from October
6, 2009 to October 8, 2009. Neither Heidi Peterson nor her staff informed Respondent of the

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1 hospital stay.

2 1.30. Respondent did not inform the children of D.S. of the emergency room visit or the hospital
3 stay, after Respondent subsequently learned of these.

4 1.31. On or about October 30, 2009 Respondent's case manager informed Heidi Peterson that they
5 planned to move D.S. Respondent subsequently telephoned Heidi Peterson to inform her that D.S.
6 would be moved because Peterson Place had no 24 hour awake care. At no time did Respondent
7 request that Heidi Peterson provide 24 hour awake care, or re-negotiate the services provided by
8 Peterson Place.

9 1.32. Respondent did not discuss a move of D.S. with any family member. No medical testimony
10 has been submitted to establish any emergency need for a move of D.S. The involved family and
11 friends of D.S. testified D.S. was receiving proper care at Peterson Place. Respondent testified that
12 she did not need to consult with the family because the children had not visited for a couple of years.
13 Respondent further testified the children did not know better than she, as she sees what is happening
14 every day.

15 1.33. On November 2, 2009 and November 16, 2009 Residential Care Services, a division of
16 DSHS, conducted an unannounced investigation of the Peterson Place residence where D.S. resided,
17 based on a complaint filed by Mary Lou Rief, RN. Ms Rief is identified as one of the team members
18 of Empire Care and Guardianship. One of the allegations related to lack of awake staff. No
19 concerns were found regarding the lack of 24 hour awake care. Exhibit 13, 15, 73.

20 1.34. On November 6, 2009 Respondent or her staff informed Heidi Peterson that D.S. was being
21 removed because there was no 24 hour awake care.

22 1.35. Respondent did not consult with or inform D.S.'s family members in advance of this move.
23 The family was informed by Peterson Place staff of the possibility that Respondent might move D.S.
24 The family contacted attorney Lin O'Dell as a possible successor guardian. By agreement
25 Respondent resigned as Guardian and Lin O'Dell was appointed successor Guardian of D.S., on
26 March 26, 2010. Exhibit 48, 51.

27 1.36. Respondent provided no testimony that she consulted with D.S.'s primary medical providers
28 as to the need for moving D.S.

1.37. Respondent, through her agent, informed the children of D.S. of the move and her location

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1 1 or 2 hours after the move. Prior to that notification the family members were concerned and upset
2 because D.S. had been removed from Peterson Place and they could not contact anyone who knew
3 her location.

4 1.38. On or about November 18, 2009 Respondent mailed a letter to the family of D.S. advising
5 them of the name and address of D.S.'s location. The letter also required the family to provide the
6 name of one contact person even though Respondent already had the names and contact numbers of
7 the family. Exhibit 24A.

8 1.39. The Board offered no testimony in support of the Grievance 2010-008 beyond what was
9 contained in the written grievance.

10 Guardianship of J.S.

11 1.40. Respondent was appointed Temporary Guardian of J.S. on April 1, 2009 pending a contested
12 hearing. Respondent was appointed Full Guardian of the Person and Estate of J.S. on May 28, 2009.
13 Exhibit 16, 17.

14 1.41. Respondent removed J.S. from the home of a family member, where he was being exploited,
15 and placed him at the E. Midway Rd, Colbert, WA, Peterson Place Adult Family Home on, May 1,
16 2009. This location is in the Mead School District. Previously J.S. was in the Spokane School
17 District. Exhibit 19.

18 1.42. J.S. suffers from hereditary spinocerebellar ataxia disorder. This disease has many significant
19 impacts on J.S.: the disease causes pain from muscle spasticity, he is legally blind, he has limited
20 ability to eat, he is wheelchair bound, and he has a shortened life expectancy. He was entitled to
21 receive special education benefits until age 21. Exhibit 55, 93, 95.

22 1.43. Despite the degenerative nature of his disease, J.S. remained cognizant and capable of
23 expressing his needs and opinions.

24 1.44. Issues surrounding J.S.'s move to Peterson Place created a dispute between Heidi Peterson
25 and Respondent. Heidi Peterson was told not to contact Respondent to discuss these issues while
26 Respondent was so upset with Heidi Peterson. Exhibit 22.

27 1.45. Melody Hayashi-Taisey had been J.S.'s teacher from 2006 to 2009. She is a teacher in the
28 Spokane School District and part of the homebound program for medically fragile students ages 13-
21. When J.S. was moved into the Mead School District Melody Hayashi-Taisey remained in

APPENDIX A

1 contact with J.S. as a friend and advocate. She participated in the original move of J.S. to Peterson
2 Place and observed how upset and affected he was by the move. Subsequent to the move to Peterson
3 Place she was told by Mary Lou Rief, Respondent's nurse consultant, that she was done and that they
4 did not need her input.

5 1.46. A meeting was scheduled with Respondent, Melody Hayashi-Taisy, and others for May 29,
6 2009 to evaluate the Individual Education Plan (IEP) for J.S. The meeting date was changed to May
7 28 and Respondent testified she was unable to attend because she had a court hearing to which she
8 was taking J.S. The only court hearing on May 28, 2009 was the hearing to appoint Respondent
9 Guardian of J.S. The Order Appointing Guardian indicates J.S. was not at the court hearing. The
10 GAL, Maxine Schmitz is listed as attending the court hearing. Exhibit 17.

11 1.47. The GAL attended the IEP meeting and emailed her notes and the IEP to Respondent on May
12 29, 2009. The email does not indicate the date of the IEP meeting. Exhibit 96, 97.

13 1.48. The Board alleges Respondent failed to register J.S. in the Mead School District in June 2009
14 to enable J.S. to receive special summer school activities and services. The Board further alleges
15 the Respondent did not enroll J.S. in September 2009 in the Mead School District for the new school
16 year.

17 1.49. Respondent testified that J.S. received one of eight scheduled summer in home school visits.
18 Respondent testified that J.S. did not want to attend school and that she was following his
19 preferences. Respondent further testified that Dr. Vivian Moise, M.D., advised her that school
20 learning was not essential and that trips and outings were proper means of stimulation and
21 socialization, which Respondent provided to J.S.

22 1.50. By September 23, 2009 J.S.'s physician, Dr. Vivian Moise, M.D., considered him to be in
23 the very terminal stages of his disease.

24 1.51. A Petition to replace Respondent as Guardian of J.S. was filed October 21, 2009.
25 Respondent was replaced as Guardian of J.S. by Thomas Robinson November 4, 2009. Exhibit 38,
26 53.

27 1.52. Dr. Vivian Moise, M.D., issued a doctor's order for J.S. on October 29, 2009 providing that
28 J.S. needs 24 hour care at Hospice House or an SNF (Skilled Nursing Facility). Exhibit 54.

1.53. On the morning of October 30, 2009 a Hospice House nurse came to Peterson Place to assess

APPENDIX A

- 1 J.S. for admittance to Hospice House. Respondent's staff arrived to move J.S.
- 2 1.54. Melody Hayashi-Taisy arrived at Peterson Place after being informed of the pending move.
3 She testified that the situation was chaotic and that she contacted the Ombudsman and Adult
4 Protective Services. She testified that J.S. was upset about the move and that he fully understood
5 hospice care was for terminally ill patients. Numerous people were in attendance to address the
6 problems caused by this pending move of J.S.
- 7 1.55. J.S. was well aware his disease shortened his life span and that members of his family and
8 relatives had died or were dying as a result of the disease. Neither Respondent nor anyone acting
9 on her behalf spoke to J.S. or told him what was going on.
- 10 1.56. Respondent testified that she was not invited to this meeting, even though the Hospice House
11 assessment was scheduled that date by Respondent's staff. She arrived later in the day. There was
12 no meeting scheduled with advance notice to people involved or interested in J.S.'s care.
- 13 1.57. Respondent arranged the move of J.S. from his family's home at the start of the Guardianship
14 of J.S. and observed how severely upset and affected he was by the move to Peterson Place.
- 15 1.58. On October 30, 2009 Respondent moved J.S. from Peterson Place Adult Family Home to
16 Hospice House, a hospice facility.
- 17 1.59. J.S. was extremely distressed by the move to Hospice House. He was moved without his
18 reclining wheelchair, in which he preferred to spend substantial time. He was described as sobbing,
19 screaming and being disruptive. Melody Hayashi-Taisy was contacted by Hospice House because
20 they did not know what to do. Respondent was not answering their telephone calls and they could
21 not get in contact with her. Melody Hayashi-Taisey delivered the wheelchair and remained with J.S.
22 until he went to sleep. At some point after his move to Hospice House, J.S. encountered his cousin,
23 who was residing at Hospice House because he was dying from the same neurological disease as J.S.,
24 which was known to J.S.
- 25 1.60. Respondent offered no testimony regarding why she did not consider or arrange for a move
26 to a Skilled Nursing Facility, or arrange for provision of hospice care at Peterson Place. Dr. Vivian
27 Moise, M.D., had no concerns regarding the level of care J.S. received at Peterson Place. Exhibit
28 85, 95.
- 1.61. Respondent did not request that Heidi Peterson provide 24 hour awake care for J.S.

APPENDIX A

1 1.62. J.S.'s condition improved at Hospice House, and Dr. Vivian Moise, M.D., issued new orders
2 authorizing his release from Hospice House. Thomas Robinson, as Successor Guardian moved J.S.
3 back to the Colbert, WA, Peterson Place, his former residence. He arranged with Peterson Place for
4 24 hour awake care. Exhibit 52, 53, 94.

5 II. CONCLUSIONS OF LAW

6 2.1. Respondent as a Certified Professional Guardian is subject to discipline by the Board
7 pursuant to GR 23 and the Disciplinary Regulations.

8 2.2. A Disciplinary Proceeding Complaint and Notice to Answer were timely and properly served
9 on Respondent.

10 2.3. Respondent timely filed an Answer, and this matter was set for hearing with a Notice of
11 Hearing, timely and properly served on the Respondent, through her attorneys.

12 2.4. The Hearing Officer has jurisdiction to hear this disciplinary matter.

13 2.5. In considering the documentary evidence the Hearing Officer did not treat the opinion letters
14 written by Commissioner Valente as binding. The Hearing Officer made independent Findings of
15 Fact and Conclusions of Law.

16 2.6. The evidence does not establish any violation of the Appearance of Fairness Doctrine.

17 2.7. The evidence does not establish that Commissioner Valente is biased against Respondent.
18 The transcripts from the hearings he conducted and the written opinion letters he issued demonstrate
19 he acted fairly in all particulars related to these grievances, including the grievance which resulted
20 in Respondent signing an Agreement Regarding Discipline.

21 2.8. A Guardian has the responsibility under RCW 11.88 to protect people who have incapacity.
22 This responsibility is encompassed in the Standards of Practice Regulation (hereinafter SOP).

23 Guardianship of E.R. Grievance 2010-007

24 2.9. The reluctance of Heidi Peterson to agree to the first return of E.R. was reasonable. The
25 emergency room staff failed to detect a urinary tract infection and blockage, which at the time of his
26 second visit to the emergency room the same day, resulted in the removal of 1000ccs of urine (1
27 Liter). Merely sedating him and discharging him seems inadequate.

28 2.10. Not agreeing with the opinion of Heidi Peterson or her staff is not a failure to cooperate and
carefully consider the views and opinions of professionals who are knowledgeable about E.R. With

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1 respect to the first return of E.R. to Peterson Place, Respondent had the same medical information
2 regarding the suitability of returning E.R. to Peterson Place as was communicated to Heidi Peterson
3 or her staff.

4 2.11. After E.R.'s second emergency room visit, after treatment of E.R.'s urinary tract infection,
5 and after overnight hospitalization, the medical professionals, including the CMHP, agreed that he
6 was medically ready to be returned to Peterson Place. Respondent relied on independent
7 professional evaluations.

8 2.12. Respondent could have shown greater empathy in how she handled the initial return of E.R.
9 and the subsequent refusal of Peterson Place to allow E.R. to return. The situation was not beneficial
10 to E.R. and appears to have negatively impacted the already poor relationship between Respondent,
11 her staff, and Heidi Peterson and her staff.

12 2.13. The evidence does not support a finding that a violation of SOP 401.9 and 401.10 is proved
13 by a preponderance of the evidence, and Grievance 2010-007 should be dismissed.

14 Guardianship of D.S. Grievance 2010-006 and 2009-013

15 2.14. A preponderance of the evidence establishes that Respondent violated SOP 401.9 and 402.1
16 by her failure to timely obtain new glasses for D.S. (The evidence establishes these violations by the
17 clear and convincing standard, as well).

18 2.15. Reading is an important activity for D.S. and should have been apparent to Respondent.
19 While she approved sending D.S. for an eye exam, she exhibited little enthusiasm for completing
20 the steps necessary to facilitate this activity of daily living that is so enjoyed by D.S.

21 2.16. Whether the delay in obtaining the glasses is attributable to non-payment of the Optometrist,
22 to D.S.'s dementia making it very difficult to complete the exam, or that the granddaughter had the
23 prescription, is immaterial. The Respondent was dismissive of the need to replace the eye glasses
24 because she deemed the glasses to have one scratched lens, only.

25 2.17. Respondent ultimately obtained a replacement prescription and new glasses were obtained.
26 The delay is inexcusable. Respondent could have obtained a replacement prescription sooner or
27 telephoned the granddaughter, if she believed the granddaughter had the original prescription.

28 2.18. Respondent did not violate SOP 405.2. When the request for new glasses was made she
authorized the transport of D.S. to have an eye exam, instead of merely replacing the eye glasses with

APPENDIX A

1 the same prescription.

2 2.19. A preponderance of the evidence establishes that Respondent violated SOP 401.9 and 402.1
3 by moving D.S. from the Peterson Place Adult Family Home on or about November 6, 2009. (The
4 evidence establishes these violations by the clear and convincing standard, as well).

5 2.20. There was a complete lack of meaningful discussion with D.S.'s involved family members
6 or with the Peterson Place staff regarding this move or the basis for it. There was no evidence of any
7 emergency medical justification for moving D.S. without input from her family.

8 2.21. The evidence offered by Respondent does not persuade the Hearing Officer that the move
9 was motivated by poor care and the lack of 24 hour awake care. There was no showing that any
10 quality of care issues could not have been addressed by discussion and communication. Respondent
11 did not make a specific demand that Heidi Peterson provide 24 hour awake care for D.S. That such
12 care could have been provided is shown by the 24 hour care J.S.'s successor Guardian obtained for
13 J.S., on J.S.'s return to Peterson Place.

14 2.22. D.S.'s family members were upset and concerned that their mother had been moved and they
15 could not contact anyone who had information about her condition or location. Respondent did not
16 provide timely notice of the move or D.S.'s new address. Respondent was generally dismissive of
17 the family members in her dealings with them.

18 2.23. A preponderance of the evidence establishes that Respondent violated SOP 401.9 and 402.1
19 by failing to inform the children of D.S. of the emergency room visit and subsequent hospitalization
20 of D.S. from October 6, 2009 to October 8, 2009. The failure to notify the children of D.S. regarding
21 these matters is not a violation of SOP 405.2.

22 2.24. The portion of Grievance 2009-013 regarding Respondent's alleged failure to return a
23 telephone call is not proved.

24 Guardianship of J.S. Grievance 2010-005

25 2.25. It has not been established by a preponderance of the evidence that Respondent's conduct
26 relating to J.S.'s IEP and schooling violate SOP 401.5, 401.9, 401.12, or 401.15.

27 2.26. J.S. received one homebound school visit in the Summer of 2009, which indicates J.S. was
28 receiving educational benefits pursuant to the IEP. Respondent provided evidence she was following
the expressed decision of J.S. regarding further schooling, and the opinion of Dr. Vivian Moise,

APPENDIX A

- 1 M.D., regarding alternative means of stimulation and socialization.
- 2 2.27. A preponderance of the evidence establishes that in moving J.S. from Peterson Place Adult
3 Family Home the Respondent violated SOP 401.5, 401.9, 401.12, 401.15 and 404.5. (The evidence
4 establishes these violations by the clear and convincing standard, as well).
- 5 2.28. Respondent showed no concern for the opinion or interest of J.S. in her decision to move him
6 to Hospice House.
- 7 2.29. Respondent knew how severely affected J.S. was by his initial move into Peterson Place. She
8 demonstrated no regard for the likely impact on him when he was moved to a hospice facility, even
9 though she knew he was fully aware of the terminal nature of his hereditary disease.
- 10 2.30. Respondent failed to consider placement of J.S. in a Skilled Nursing Facility, re-negotiating
11 the Agreement with Peterson Place to provide for 24 hour awake care, or arranging for provision of
12 hospice care at Peterson Place.
- 13 2.31. Respondent failed to consider the preference of J.S. to remain at Peterson Place, a setting
14 with which he was comfortable and familiar, during what were, then, perceived to be his final days.
- 15 2.32. Respondent did not transfer the reclining wheelchair with J.S., failing to protect the personal
16 interests of J.S.
- 17 2.33. Respondent did not give consideration to the opinions of J.S., or cooperate and fully consider
18 the views and opinions of professionals, relatives or friends of J.S.
- 19 2.34. Respondent did not make herself available during the move of J.S. by telephone or otherwise,
20 causing a significant delay in delivering the reclining wheelchair, and otherwise being available to
21 assist J.S., or Hospice House.
- 22 2.35. The professional misconduct of Respondent arising from the moving of D.S. and J.S. caused
23 serious injury to J.S., D.S. and D.S.'s family.
- 24 2.36. The professional misconduct of Respondent arising from the replacement of D.S.'s eye
25 glasses caused injury to D.S.
- 26 2.37. The Board has not established by a preponderance of the evidence that Respondent moved
27 D.S. and J.S. from the Peterson Place Adult Family Home, where they were residing, in retaliation
28 against Heidi Peterson, owner of Peterson Place because of her refusal to permit E.R. to return to
Peterson Place.

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Guardianship of D.S. Grievance 2010-008

2.38. The evidence establishes that Respondent did agree to be replaced as Guardian for D.S. (and others) which was accomplished. A preponderance of the evidence does not establish a violation of any SOP by Respondent.

2.39. A preponderance of the evidence does not establish that Respondent failed to answer any questions that caused DSHS to stop payment of the Adult Family Home.

2.40. The Grievance 2010-008 is not proved by a preponderance of the evidence and should be dismissed.

III. RECOMMENDATIONS TO THE BOARD FOR ACTION

In accordance with DR 511.16 and 515 the Hearing Officer makes recommendations to the Board for the following actions regarding sanctions and remedies:

Analysis of Factors

3.1. SOP 515.1.1, the duty violated:

A. Respondent has been found to have violated SOP 401.5, 401.9, 401.12, 401.15, 402.1, and 404.5.

B. These Standards of Practice can be characterized as involving the duty to actively seek out information from other people, including the incapacitated person, to enable the Guardian to make appropriate care and residential placement decisions in order to enhance the well-being of the incapacitated person. This is a paramount duty of any Guardian.

3.2. SOP 515.1.2, mental state: Respondent acted knowingly and wilfully.

3.3. SOP 515.1.3, potential or actual injury: The injury to D.S. and J.S. is actual, and significant. The injury to the children of D.S. is actual.

3.4. SOP 515.1.4.1, existence of aggravating factors:

A. Respondent has substantial experience as a Guardian, including prior service on the Board. While not specifically listed in DR 515.1.4.1, this Regulation's list of factors does not limit consideration of aggravating factors to only those enumerated. It is noted that the Agreement Regarding Discipline (see Exhibit 76) signed by Respondent cites Respondent's substantial experience as an aggravating factor. This factor is given significant weight.

B. Respondent refuses to acknowledge the wrongful nature of her conduct. Respondent's

APPENDIX A

1 position in this regard is troubling. It is one thing to dispute allegations of misconduct and challenge
2 the evidence. Respondent has done much more than that. Respondent is insistent that, allegedly,
3 improper actions and motivation by Commissioner Valente are the reason she is facing this
4 disciplinary proceeding. And Heidi Peterson of Peterson Place Adult Family Home is to blame.
5 According to Respondent, it is not her obligation as a Guardian to monitor the care needs of
6 incapacitated persons. Respondent contends it is the obligation of the Adult Family Home owner
7 to advise Respondent when the Adult Family Home can no longer provide appropriate care. This
8 factor is given significant weight.

9 C. There are multiple offenses involving the Guardianships of D.S. and J.S., but only two
10 complainants. This factor is given less weight.

11 D. The victims are vulnerable. By the very nature of guardianships, vulnerable people are
12 impacted. Clearly D.S. and J.S. were vulnerable, although J.S. was capable of expressing his views
13 and opinions. Additionally, both these individuals had advocates who helped to ameliorate the effect
14 of the misconduct to a degree. This factor is given some weight.

15 E. There is a prior disciplinary action by the Board against Respondent, namely a Letter of
16 Admonishment. While this is the lowest level of sanction it has relevance in this matter as it
17 supports a conclusion that Respondent has a pattern of not cooperating or collaborating with others
18 to insure the best interests of incapacitated persons are advanced. This factor is given significant
19 weight.

20 3.5. SOP 515.1.4.2, existence of mitigating factors:

21 A. Respondent cooperated with the disciplinary proceedings, but there is no showing that
22 Respondent cooperated beyond what is required of a Certified Professional Guardian in a
23 disciplinary proceeding. This factor is given little weight.

24 B. Respondent takes referral cases from Adult Protective Service. This factor is given some
25 weight.

26 C. No other mitigating factors were found to apply.

Sanction

27
28 3.6. Imposition of the sanction of decertification pursuant to DR 515.2.1.1, without consideration
of aggravating or mitigating factors, requires concluding Respondent engaged in professional

APPENDIX A

1 misconduct with the intent to cause serious or potentially serious injury to a party. The Board asserts
2 that "intent" as used in this DR means acting with the knowledge that one's actions may cause
3 serious or potentially serious injury. This definition is more aptly characterized as "willful." See
4 *Goldsmith v. DSHS*, 169, Wn.App 573 (2012). A review of all sections of DR 5.15.2.1 supports the
5 conclusion that decertification is generally appropriate in cases of the most serious misconduct, and
6 that "intent" as used in this DR means acting with the specific purpose to cause serious or potentially
7 serious injury.

8 3.7. DR 515.2.3 can be characterized as imposition of the sanction of a letter of reprimand when
9 the Guardian engages in professional misconduct that adversely reflects on the professional
10 Guardian's fitness to practice, but which is not so serious as to be criminal in nature.

11 3.8. DR 515.2.2 can be characterized as imposition of the sanction of a prohibition against taking
12 new cases or suspension for a period of time, or both, when the Guardian engages in professional
13 conduct¹ that approaches criminal conduct that seriously reflects on the professional Guardian's
14 fitness to practice.

15 3.9. The aggravating factors are significant and substantially outweigh the mitigating factors. For
16 these reasons a sanction of a letter of reprimand is inappropriate.

17 3.10. The sanction of suspension for 12 months is appropriate for the professional misconduct
18 relating to the residential relocation of D.S. and J.S.

19 3.11. The sanction of a prohibition of taking new cases for 3 months is appropriate for the
20 professional misconduct relating to the acquisition of new eye glasses for D.S. This sanction to run
21 concurrently.

22 3.12. The sanction of a prohibition of taking new cases for 3 months is appropriate for the
23 professional misconduct relating to the failure to inform the children of D.S. of the emergency room
24 visit and hospitalization. This sanction to run concurrently.

25 3.13. By way of remedy under DR 515.3, Respondent shall for a period of 24 months after the
26 period of suspension, at her cost, obtain consultation from a qualified Certified Professional
27

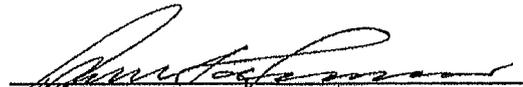
28 ¹ DR 515.2.2 refers to "professional conduct incompatible with the Standards of Practice" (emphasis added).
I believe this section intended to refer to "professional misconduct" to be consistent with the other provisions of DR515.2,
and that the actual printed word is a typographical error.

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1 Guardian, subject to approval by the Board, to review any decision and the process followed,
2 regarding the residential relocation of any incapacitated person for whom the Respondent is the
3 Guardian, in advance of the relocation. Said consultant shall report to the Board within 30 days of
4 any relocation regarding Respondent's adherence to the relevant Standards of Practice Regulations.
5 In the event of exigent circumstances that require an emergency relocation of an incapacitated person
6 without sufficient time for the consultant to perform a review, the consultant shall report to the
7 Board, within 30 days after the relocation, regarding the exigent circumstances and Respondent's
8 adherence to the relevant Standards of Practice Regulations to the extent practicable under the
9 circumstances.

10 3.14. Pursuant to DR 516, Respondent should be required to pay costs, including the cost of the
11 discipline process and any other directly provable expense, including attorney fees.

12 Dated: November 5, 2012.

13 
14 Roderick S. Simmons, Hearing Officer
15 Certified Professional Guardian Board

16 DECLARATION OF SERVICE

17 I declare that on the date below indicated, at Olympia, Washington, I served a copy of this document
18 upon the following parties of record: Michael L. Olver, Christopher C. Lee, and Kameron L.
19 Kirkevold, Counsel for Respondent; and Chad C. Standifer, Assistant Attorney General, representing
20 the Board, by electronic mail and regular mail.

21 Dated: 11/9/12 
22 Kim Rood
23 Administrative Office of the Courts
24
25
26
27
28

APPENDIX B
Standards of Practice

CPG Standard 401.5:

The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self reliance.

CPG Standard 401.9:

The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

CPG Standard 401.12:

When possible, the guardian will defer to an incapacitated person's autonomous capacity to make decisions.

CPG Standard 401.15:

Guardians of the Person shall have meaningful in-person contact with their clients as needed and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.

CPG Standard 402.1:

The primary standard is the Substituted Judgment Standard. This means that the guardian shall make reasonable efforts to ascertain the incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person.

CPG Standard 404.5:

The guardian shall, to the extent possible, select residential placements which enhance the quality of life of the incapacitated person, provide the opportunity to maximize the independence of the incapacitated person, and provide for physical comfort and safety.

APPENDIX C
Aggravating and Mitigating Factors

Disciplinary Rule 515.1.4

515.1.4.1 Aggravating factors include prior disciplinary action by the Board against the same professional guardian, dishonest or selfish motives, a pattern of misconduct, multiple offenses, failure to cooperate during the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, indifference to making restitution, and illegal conduct.

515.1.4.2 Mitigating factors include the absence of a prior disciplinary record, timely good faith to make restitution or to rectify consequences of misconduct, cooperation with the disciplinary proceedings, and temporary circumstances outside the professional guardian's control.

CERTIFICATE OF SERVICE

I certify that I caused to be served a true and copy of the foregoing document via electronic mail and first class U.S. Mail, postage paid upon the following:

Michael L. Olver
Helsell Fetterman LLP
1001 4th Ave Ste 4200
Seattle, WA 98154-1154
nfallis@helsell.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of July 2013, at Olympia, WA.


KRISTIN D. JENSEN
Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Jensen, Kristin (ATG)
Cc: Even, Jeff (ATG); Standifer, Chad (ATG); Baluyut, Jeanette (ATG); nfallis@helsell.com; mwimmer@helsell.com
Subject: RE: 88513-3, In re Lori A. Petersen, BRIEF OF RESPONDENT CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD

Rec'd 7-31-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jensen, Kristin (ATG) [<mailto:KristinJ@ATG.WA.GOV>]
Sent: Wednesday, July 31, 2013 4:22 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Even, Jeff (ATG); Standifer, Chad (ATG); Baluyut, Jeanette (ATG); nfallis@helsell.com; mwimmer@helsell.com
Subject: 88513-3, In re Lori A. Petersen, BRIEF OF RESPONDENT CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD

Sent on behalf of Jeffrey T. Even, WSBA #20367, Office ID #91087

Dear Clerk:

Attached for filing in the above-noted case, please find Brief of Respondent Certified Professional Guardianship Board.

<<88513-3 Brief of CPG Board.pdf>>

Respectfully,

Kristin

KRISTIN D. JENSEN
Office of the Attorney General
Solicitor General's Office
(360) 753-4111
kristinj@atg.wa.gov



Please save paper by printing only when necessary.