

# Standards of Practice

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## 400 General

The following standards apply to all Certified Professional Guardians and Certified Professional Guardian agencies. These standards apply only to the degree that the court has granted a guardian the authority contemplated in a given standard.

Whenever the term “guardian” is used in these Standards, it is meant to refer to a certified professional guardian or to a certified professional guardian agency.

Whenever the term “court” is used in these Standards, it is meant to refer to the Superior Court which has authority over the guardianship in which the guardian has been appointed.

Whenever the term “incapacitated person” (IP) is used, it is meant to refer to the incapacitated person for whom the guardian has been appointed under RCW 11.88.

Whenever the term “notice parties” is used, it is meant to refer to those people who have requested special notice of proceedings under RCW 11.92.150.

A guardian is a fiduciary. A fiduciary has the duty to act primarily for another's benefit. The Guardian shall carry out his or her duties carefully and honestly. The Guardian shall act selflessly and with undivided loyalty to the incapacitated person.

A guardian cannot delegate his or her decision-making authority to another person or agency. This does not preclude employing others to carry out the guardian's decision.

To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, and “should” creates a duty or obligation, but is not absolute, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." <sup>1</sup>

## 401 Guardian's Duty to Court

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

401.2 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with these standards, the guardian shall bring the conflict to the attention of the court and seek the court's direction.

401.3 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian in the management of the affairs of an incapacitated person.

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<sup>1</sup> The Certified Professional Guardian Board acknowledges that these Standards of Practice draw from the National Guardianship Association (NGA) Standards of Practice and that the NGA has granted the Board permission to use them.

- 401.4 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.
- 401.5 The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.
- 401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian. In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction.

## **402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals**

- 402.1 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.
- 402.2 The guardian, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.
- 402.3 The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.
- 402.4 The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.
- 402.5 A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except: (a) when necessary and relevant to the needs of the incapacitated person or (b) as required by these standards or other applicable laws or when directed by the court or the CPG Board.
- 402.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the incapacitated person to the extent reasonable and necessary.
- 402.7 The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall act to coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

## 403 Self-Determination of Incapacitated Person

- 403.1 The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest extent consistent with their protection and safety. The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.
- 403.2 Whenever appropriate a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the incapacitated person. The guardian shall acknowledge the residual capacity and preferences of the incapacitated person.
- 403.3 When making decisions on behalf of the incapacitated person, the guardian shall evaluate the alternatives that are available and choose the one that best meets the needs of the incapacitated person while placing the least restrictions on the incapacitated person's freedom, rights, and ability to control his or her environment.
- 403.4 When appropriate, the guardian will defer to an incapacitated person's residual capacity to make decisions.
- 403.5 Unless otherwise directed by the court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.
- 403.6 The guardian shall, whenever appropriate or required by law, provide other requested information to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the incapacitated person's estate, and (c) medical and other personal information related to the care of the incapacitated person.
- 403.7 The guardian shall determine the extent to which the incapacitated person identifies with particular ethnic, religious, and cultural values and shall consider those values in the guardian's decision-making to the extent appropriate.
- 403.8 Sexual Expression:
- 403.8.1 The guardian shall acknowledge the incapacitated person's right to interpersonal relationships and sexual expression. The guardian shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian shall take reasonable steps to protect the incapacitated person from victimization.
- 403.8.2 The guardian shall ensure that the incapacitated person is informed of birth control methods when appropriate.
- 403.8.3 The guardian shall take reasonable steps to protect the rights of the incapacitated person with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the incapacitated person's values and customs.

## 404 Contact with the Incapacitated Person

- 404.1 Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in-person contact.
- 404.1.1 The guardian should, when appropriate, assess the incapacitated person's physical appearance and condition (taking into account the incapacitated person's privacy and dignity) and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.
- 404.1.2 The guardian shall maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.
- 404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.
- 404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.
- 404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.
- 404.2 Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements.
- 404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

## 405 General Decision Standards

All decisions and activities of the guardian shall be made according to the applicable decision standard.

- 405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian's determination of the incapacitated person's competent preferences, i.e. what the incapacitated person would have decided when he or she had capacity. 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 when the incapacitated person had capacity.
- 405.2 When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.

## **406 Conflicts of Interest**

- 406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.
- 406.2 There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.
- 406.3 A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. (Revised 1-9-12)
- 406.4 The role of a guardian is primarily that of a decision-maker and coordinator of services. The guardian or agency (or an entity in which a guardian has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval the guardian must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. (Revised 1-9-12)
- 406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)
- 406.6 A guardian shall not accept a gift from an incapacitated person or their estate other than ordinary social hospitality.

- 406.7 Payment of fees or other compensation for guardianship services by a party other than the incapacitated person is a potential conflict of interest which shall be fully disclosed.
- 406.8 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.

#### **407 Residential Decisions**

- 407.1 The guardian shall ensure that the incapacitated person resides in the least restrictive environment that is appropriate and available.
- 407.2 The guardian shall acknowledge the need to allow all persons the opportunity to engage in activities and live in conditions which are culturally and socially acceptable within the context of the incapacitated person's cultural and life values.
- 407.3 The guardian shall take reasonable measures to effectuate the incapacitated person's residential preferences.
- 407.4 The guardian shall know the current state of the law regarding limits on the guardian's authority as to residential decisions.
- 407.5 The guardian shall not remove the incapacitated person from his or her home or separate the incapacitated person from family and friends unless such removal is necessary to prevent significant harm or because of financial constraints. The guardian shall make reasonable efforts to ensure the incapacitated person resides at the incapacitated person's home or in a community setting.
- 407.6 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.
- 407.7 Before relocating the incapacitated person to a new residence, the guardian shall consult the incapacitated person, and should consult professionals, notice parties, and other third parties involved with the incapacitated person's care to the extent doing so does not put the incapacitated person, guardian, or guardian's staff at risk of personal harm. Emergency residential decisions to protect the incapacitated person may be made without prior consultation.
- 407.8 The guardian shall, as necessary, thoroughly research and evaluate the incapacitated person's residential alternatives.
- 407.9 Should the only available residential placement not be the most appropriate or least restrictive, the guardian shall regularly review alternatives to that placement and shall make reasonable efforts to arrange an appropriate and least restrictive residential alternative.
- 407.10 The guardian shall regularly monitor the incapacitated person's residential placement to ensure that it is appropriate and that such placement is the least restrictive alternative. The guardian should consent to changes, as they become necessary,

advantageous, or otherwise in the incapacitated person's best interests. The guardian should consider that even changes within an existing residential facility may have an impact on the quality of life of the incapacitated person.

#### **408 Medical Decisions**

- 408.1 The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits.
- 408.2 The duty to provide informed consent does not prevent a guardian from electing to make code status decisions in advance of need.
- 408.3 The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment.
- 408.4 The guardian shall actively promote the health of the incapacitated person by arranging for regular preventative care including but not limited to dental care, diagnostic testing, and routine medical examinations to the extent preventative care and resources are available.
- 408.5 The guardian shall be available to respond to urgent need for medical decisions. The guardian shall provide instructions regarding treatment or non-treatment to be followed by medical staff in emergencies.

#### **409 Financial Management**

- 409.1 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate shall be documented by means of accurate and complete records of all transactions.
  - 409.8.1 The guardian shall meet with the incapacitated person and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the incapacitated person and to obtain historical information about the incapacitated person's prior management of financial affairs.
  - 409.8.2 The guardian shall, subject to court direction, allow the incapacitated person to manage funds to his or her ability when appropriate.

- 409.2 The guardian shall know and obey the law related to managing an incapacitated person's estate. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.88 and 11.92, and laws relating to employment, income, and taxes. The guardian shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.
- 409.3 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.
- 409.4 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.
- 409.5 In certain cases, guardian shall consider the needs of the incapacitated person's dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the incapacitated person as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such support or maintenance.
- 409.6 When the available estate of the incapacitated person is sufficient, the guardian may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the incapacitated person, bearing in mind both foreseeable requirements of the incapacitated person and the advantages and disadvantages to the incapacitated person of such gifts, including tax consequences.
- 409.7 The guardian shall apply for all public and insurance benefits for which the incapacitated person is eligible. When implementing necessary changes in the incapacitated person's lifestyle, the guardian shall seek to minimize the stress of any transition.
- 409.8 The guardian shall exercise prudence in investment, shall periodically review the incapacitated person's situation and assets, and make recommendations regarding appropriate investments. In the exercise of prudence the guardian shall:
- 409.8.1 Not allow assets to sit idle except for good reasons.
  - 409.8.2 Consider the tax consequences of decisions.
  - 409.8.3 Consider the incapacitated person's long term ability to sustain costs of arrangements made by the guardian.
  - 409.8.4 Consider the incapacitated person's ability to gain the benefits of specific decisions.
  - 409.8.5 Consider the costs incurred in managing investments, including the costs of the guardian, those specialists hired by the guardian, and the costs of the investment vehicles.
  - 409.8.6 Consider the incapacitated person's historical investment pattern and tolerance for risk, lifestyle needs, care and medical needs, estate considerations, tax consequences, and life expectancy.

- 409.9 A guardian shall not commingle the funds of an incapacitated person with funds of the guardian or the funds of staff. A guardian may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made
- 409.10 The guardian shall not borrow from an incapacitated person. A guardian shall not lend funds at interest to an incapacitated person.
- 409.11 The responsibility to protect and preserve the guardianship estate rests with the guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the guardians identified with the Certified Professional Guardian Board as the responsible guardians for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian to provide appropriate oversight and review, in order to preserve the guardianship estate.
- 409.12 At the death of the incapacitated person, the guardian shall comply with RCW 11.88.150.
- 409.13 The guardian shall obtain insurance coverage, as appropriate and feasible, for guardianship property.

## **410 Guardian Fees and Expenses**

- 410.1 The guardian is entitled to reasonable compensation for services rendered on behalf of the incapacitated person. The guardian has a duty to conserve the estate of the incapacitated person. Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty. Services requiring a minimal degree of training, skill and experience should be billed accordingly.
- 410.2 All compensation for the services and expenses of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court. The guardian shall review each of the following factors in determining the reasonableness of his/her fee: (a) the necessity of the service, (b) the time required, (c) the degree of skill and experience required to perform the service, and (d) the cost of any reasonable alternative.
- 410.3 When requesting court approval, the guardian shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship case to the court and parties entitled to notice. The guardian shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

- 410.4 The duties of a guardian to an incapacitated person are not conditioned upon the person's ability to compensate the guardian.
- 410.5 If the guardian is also an attorney, billings shall be in accordance with RCW 11.92.180.

#### **411 Changes of Circumstances/Limitation/Termination**

- 411.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.
- 411.2 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.
- 411.3 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.
- 411.4 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.
- 411.5 If the guardianship is a limited guardianship, the guardian shall report to the court when there are circumstances in which the incapacitated person appears to require assistance which exceeds the authority of the guardian.
- 411.6 If the guardianship is of the person only, the guardian shall report to the court when protection of the incapacitated person's estate may be necessary.
- 411.7 If the guardianship is of the estate only, the guardian shall report to the court when protection of the person may be necessary.

#### **412 Sale or Purchase of Guardianship Practice**

- 412.1 A certified professional guardian may choose to sell all or substantially all of a guardianship practice to another certified professional guardian, including goodwill, subject to the following guideline: to the extent that the sale of the practice contemplates a substitution of guardian for any of the guardian's current clients, court approval, with notice to all incapacitated persons and all notice parties, shall be obtained at least 60 days before completing the sale. Regardless of whether any sale or transfer occurs, a guardian remains subject to all of these standards with respect to any incapacitated persons the guardian is appointed for, including the duty to ensure continuity of care, until the guardian is discharged by the court.