







# Board Initiatives

The Professional Guardian Certification Oversight Board, the precursor to the Board, drafted guardian regulations in 1999. At that time, the regulations were considered innovative and comprehensive. However, the Board recognizes that just as the practice of guardianship has evolved, the regulation of professional guardians must evolve, and there is a need for new and revised regulations to keep pace with the evolving profession.

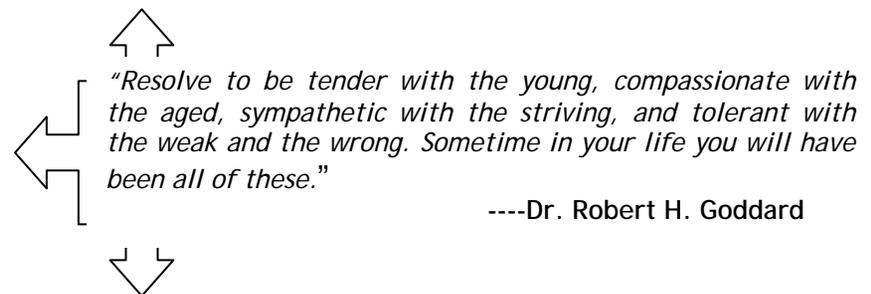
With the assistance of personnel with the Administrative Office of the Courts (AOC), subcommittees of the Board revised disciplinary, continuing education, and application regulations. Board approval of these revisions is pending.

The proposed revisions to the Disciplinary Regulations help to clearly define and streamline the disciplinary process, allowing the Board to respond quickly to grievances as it honors its commitment and responsibility to protect incapacitated persons, while providing due process to certified professional guardians.

In addition to a review of existing regulations, the Board drafted and approved a new regulation requiring certified professional guardians to obtain errors and omissions insurance (E & O)(see Appendix A). E & O insurance provides coverage for damages resulting from unintentional errors and omissions of professional guardians and employees.

The Board has gradually developed the insurance regulation over several years as it strived to balance the fundamental requirement to protect the interests of incapacitated individuals and the risks associated with the practice of guardianship. After careful consideration, the Board approved a regulation that includes a process to obtain an exemption for guardians with a limited caseload (25 or fewer guardianship case appointments) with less than \$500,000.00 total guardianship assets under management.

The Board also published three advisory ethics opinions in 2006. These opinions clarified when a professional guardian may petition for him or herself as guardian, if and when a professional guardian may provide services to an alleged incapacitated person before a determination of incapacitation, and how long a professional guardian should retain client records (see Appendix B).



## Comprehensive Review and Revision of Disciplinary Regulations

# Board Initiatives

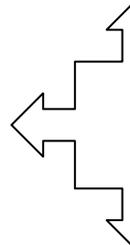
**W**ith the assistance of the AOC information technology personnel, the application process for certification is now web-based. Utilizing the web-based technology, applicants complete individual and agency applications and pay the initial fee with a debit or credit card.

Current certified professional guardians use the web-based technology to update contact information, renew certification including paying the annual recertification fee with a debit or credit card and view continuing education units.

The web-based process is convenient for applicants and certified professional guardians; reduces the amount of time spent by staff inputting data, provides more efficient and accurate means for data collection and reporting, facilitates efficient receipt of funds, and provides an accessible means for Board members to review applications from virtually any location.

**T**he initial certification process included a Washington State background check of all applicants as one means of protecting the interests of incapacitated persons. Given the mobility of members of society and improvements in technology, the Board decided that a national background check was prudent and feasible at this time. In conjunction with the Washington State Patrol and the Federal Bureau of Investigation, a nationwide background check is performed for every applicant seeking certification.

## Improving the Application Process



*"A human being is a part of the whole called by us universe, a part limited in time and space. He experiences himself, his thoughts and feeling as something separated from the rest, a kind of optical delusion of his consciousness. This delusion is a kind of prison for us, restricting us to our personal desires and to affection for a few persons nearest to us. Our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole of nature in its beauty."*

----Albert Einstein

# Board Initiatives

**E**ducation requirements for certified professional guardians were developed and mandated in 2000 with the adoption of GR 23. The minimum requirement was a high school diploma or GED. At that time, there were many people interested in becoming certified guardians who had been working as court-appointed guardians for years, with many years of experience in the field. Individuals now applying for certification do not have years of qualifying experience as actual court-appointed guardians, but instead usually meet only the bare minimum requirements of experience in a field of some relevance to the provision of guardian services. It has become apparent to the Board that new candidates require more extensive training to ensure that they are able to fulfill the varied duties of a certified professional guardian.

Over the past seven years, it has become more and more apparent that the expanded lifestyle choices of incapacitated persons demand that professional guardians possess more advanced knowledge and decision-making ability. If the incapacitated person is institutionalized in stable condition, has few assets, and devotes income to the cost of care, few decisions are required. But, today's incapacitated persons have

many more options.<sup>1</sup> The law requires that the least restrictive alternative be the first consideration.

The options available to incapacitated persons are the result of societal changes. There has been a shift from institutional care to community care as the elder-care industry encourages assisting individuals to be active members of society. This shift is very apparent in Washington State where special permission to invest Medicaid dollars in community-based long-term care was received in the late 1980s, and today our community programs are among the most developed in the country, with more than half of Medicaid expenditures going to community and home services. Health-care decisions have become more complex, and the possible health care interventions have grown. Simply choosing between prescription drug programs requires greater analysis and decision-making ability.<sup>2</sup> In addition, "Baby Boomers" with retirement incomes, pensions, and IRAs from well-paid positions, both blue and white collar, will need guardians with

---

<sup>1</sup> States Finding Ways to Keep Elderly Out of Nursing Homes (last retrieved April 13, 2006 at <http://www.seniorjournal.com/NEWS/Eldercare/5-12-13-KeepOutNurseHomes.htm>).

<sup>2</sup> Medicare Prescription Drug Program and Plan Finder Complicated for Seniors (last retrieved April 13, 2006, from <http://www.familiesusa.org/resources/newsroom/press-releases/medicare-prescription-drug.html>)

# Board Initiatives

the ability to make sound financial management decisions. The expanded lifestyles and needs of the incapacitated have created a need for an evolving role of guardians who have more experience and are better qualified academically.

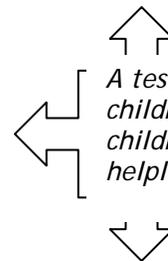
The complexities and frequent eligibility changes among Medicaid, Social Security, and other public entitlements as well as taxation rules at various governmental levels, and an overall understanding of various investment alternatives and strategies all indicate the need for a reliable benchmark for minimum entry-level education criteria for new professional guardians. There is also the need for basic communication skills in order to initiate and maintain care plans, understand medical alternatives, petition for instructions, complete various benefit applications and correspondence with care providers, governmental agencies, and the court.

Absent personal knowledge, incapacitated persons, families, the public, and the courts cannot be expected to determine the quality of guardianship services any guardian will provide. Protecting incapacitated persons from unqualified individuals who are not prepared to handle the complex issues facing the incapacitated, requires stringent criteria that help to hold guardians accountable.

The Board believes that eventually the complexity of guardianships will require guardians to have a bachelor's degree. In the interim, the Board has developed a model curriculum and is exploring the development of a certificate program at the University of Washington. The curriculum will be used for the first time during the initial mandatory training March 29 and 30, 2007.

The Board decided to clearly define the knowledge, skills, and abilities needed to be a certified professional guardian. To accomplish this goal, the Board (with the assistance of the Washington State Center for Court Research) developed a one-time questionnaire to obtain demographic profiles of certified professional guardians, incapacitated individuals, and the duties and tasks performed by certified professional guardians. The survey will be completed during the second quarter of 2007.

## Improving Guardian Preparation



*A test of a people is how it behaves toward the old. It is easy to love children. Even tyrants and dictators make a point of being fond of children. But the affection and care for the old, the incurable, the helpless are the true gold mines of a culture.*

---Abraham J. Heschel

# Board Initiatives

In 2006, the Board developed a quarterly newsletter entitled *Guardian Focus*. The newsletter was designed to update judicial officers and certified professional guardians and agencies on actions taken by the Board and other items of interest affecting professional guardianship practice.

The newsletter includes relevant statutory changes or new statutes, state court rules and general rules including GR 23 and Board regulations regarding certified professional guardians, as well as proposed changes to rules and regulations. In addition, the newsletter may also include relevant reported case law from the Washington Supreme Court or Court of Appeals and activities of the Board, to include a summary of any disciplinary actions taken by the Board, scheduled Board approved continuing education training opportunities and the dates for upcoming certified professional guardians mandatory initial certification training.

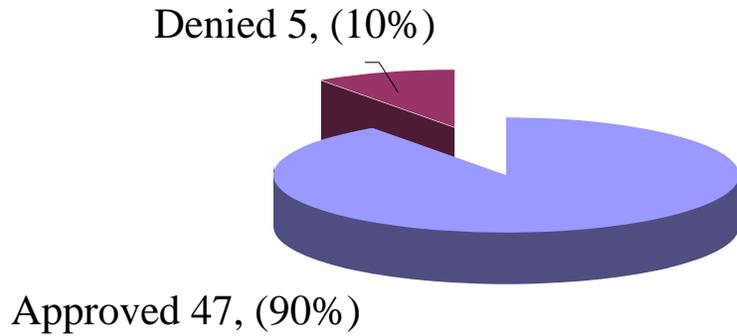
Another important feature of the newsletter is publishing approved ethics advisory opinions issued by the Board. These ethics opinions are intended to provide certified professional guardians with the best practice in a variety of circumstances faced in their client service. While these ethics opinions are not binding upon certified professional guardians in the same manner as the Standards of Practice, they do set forth decision-making guidelines for certified professional guardians which the courts and/or the Board will likely review in any grievance proceeding.



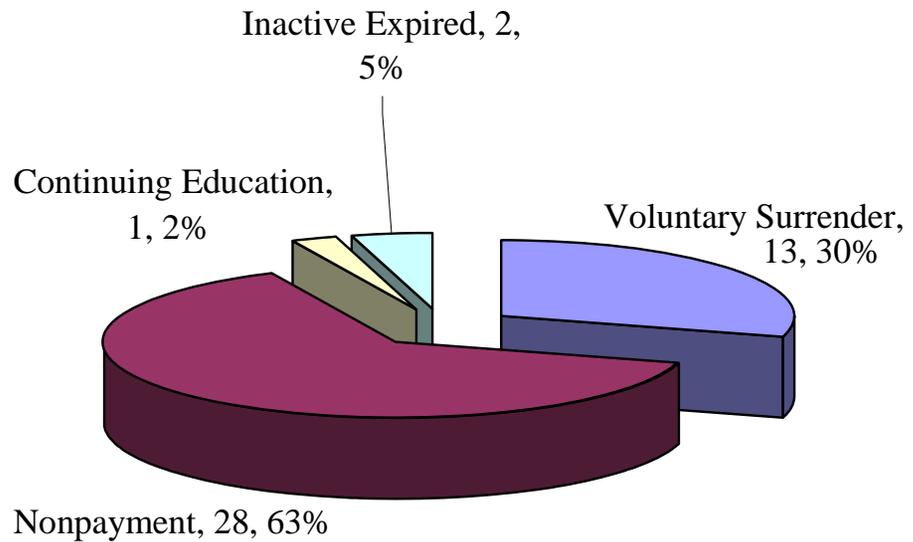
## Communicating Board Activity to Judicial Officers

# 2006 Statistics

## 2006 Applications



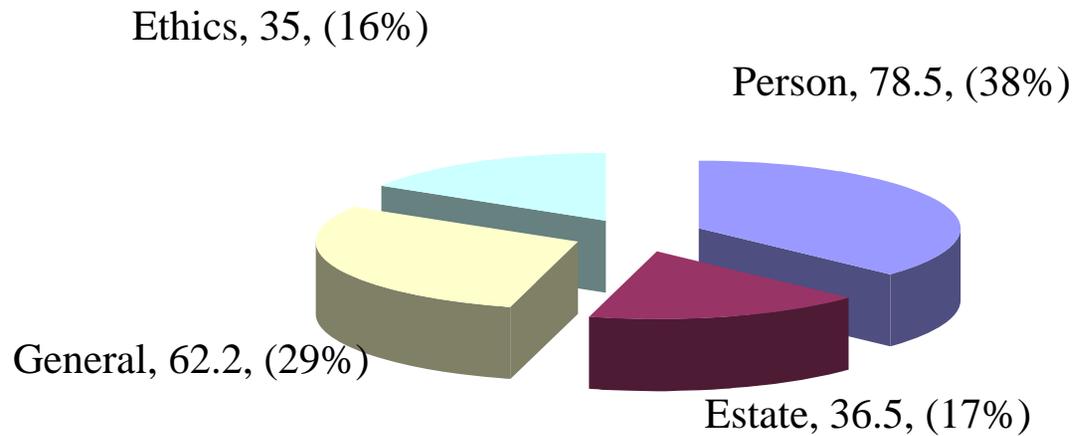
## 2006 Revoked Certifications



- 
- Continuing Education – Failed to complete 12 hours of continuing education
  - Inactive Expired- Failed to recertify after inactive status expired
  - Nonpayment – Failed to pay annual recertification fee
  - Voluntary Surrender – Voluntary resignation
-

# 2006 Statistics

## 2006 Approved Continuing Education Hours Delivered by Education Providers



---

Certified professional guardians must complete 12 hours (two ethics, two general, four estate, and four person) mandatory continuing guardian education hours each calendar year. Continuing guardian education is provided by private vendors who must satisfy the content guidelines developed by the Board.

---

# Appendix A - New and Revised Regulations

## **[New Standard of Practice] 406.12**

The responsibility to protect and preserve the guardianship estate rests with the certified guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the certified 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. (Approved September 11, 2006).

## **[New Regulation] INSURANCE REGULATION 117**

### 117.1 Purpose

The purpose of this regulation is to provide coverage for damages resulting from unintentional errors and omissions of the guardian and its employees.

### 117.2 Requirements

Certified professional guardians (guardians) and certified professional guardian agencies (agencies) shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless exempted or waived by this regulation.

### 117.3 Exemptions

Guardians or agencies with 25 or fewer guardianship case appointments at one time and with less than \$500,000.00 total countable guardianship assets under management are exempt from the requirement of maintaining errors and omissions insurance as set forth in this regulation. With respect to this regulation, only those appointments held in the name of the guardian or agency shall be counted toward the caseload or monetary limit.

#### 117.4 Countable Guardianship Assets

- 117.4.1 “Countable guardianship assets” shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship estates currently managed by the guardian or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship assets shall not include burial trusts, pensions, or personal property other than as described in this regulation.
- 117.4.2 Issues as to whether or not an asset should be included in the countable guardianship assets of a guardian or agency shall be resolved with a preference toward including the asset as a countable guardianship asset.

#### 117.5 Annual Report

- 117.5.1 By July 1 each year, every guardian and agency shall file with the Board a declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.
- 117.5.2 A guardian or agency who is required by this regulation to carry an errors and omissions policy shall include a declaration page from its policy of errors and omissions insurance of not less than five hundred thousand dollars (\$500,000) with the guardian’s or agency’s annual declaration signed under penalty of perjury.
- 117.5.3 At any time, the Board may request information from the guardian or agency to determine whether the guardian or agency meets the requirements of this regulation. Failure of the guardian or agency to cooperate may subject the guardian or agency to disciplinary action under this regulation.

#### 117.6 Duty to Report Loss of Insurance or Change of Status

- 117.6.1 A guardian or agency shall report to the Board in writing any lapse or cancellation of errors and omission coverage within fifteen (15) days of the notice to the guardian or agency of that cancellation or lapse and provide a copy of the notice of non-renewal from the insurance company. The guardian or agency shall have forty-five (45) days from notice to the guardian or agency of that cancellation or lapse to meet the requirements of this regulation and to file a declaration under penalty of perjury on a form approved by the Board stating that the guardian or agency meets the requirements of regulation 117.

117.6.2 A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

117.7 Failure to Comply

117.7.1 Failure to comply with this regulation in any part may subject the guardian or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

117.7.2 In the event of a guardian's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice must advise the guardian or agency of the Board's intent to impose disciplinary sanctions for failure to comply with this financial responsibility regulation and describe how the guardian or agency has failed to comply with the regulation. The notice must advise the guardian or agency that the guardian or agency may file a petition with the Board requesting an administrative hearing to determine whether the guardian or agency is in compliance with this regulation.

The petition must set forth facts either explaining how the guardian or agency has complied with this regulation or, if the guardian or agency acknowledges that it has not complied with the regulation, then facts in support of why the Board should not take disciplinary action against the guardian or agency. The petition must be signed under penalty of perjury by the guardian. The guardian or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.

117.7.3 If a petition is filed by the guardian or agency, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. The guardian or agency may choose to be represented by an attorney, at the guardian or agency's expense, or may appear in pro se. The petitioner may submit to the AOC additional written material which may include statements, correspondence, affidavits, and memoranda of law or other information which the petitioner believes will assist the Review Panel. All written materials must be received by the AOC within 30 days after the filing of the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone or other means. After the hearing, the Review Panel shall make written findings, conclusions and a recommendation as to whether the Board should grant the petition. If the recommendation of the Panel is to deny the Petition, the Panel shall also recommend the type of disciplinary sanction, if any, the Board should impose on the guardian or agency. The findings, conclusions and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the guardian or agency.

117.7.4 The Board shall review the recommendation of the Review Panel and make a final decision approving or denying the petition. If the petition is denied, then the Board may impose a disciplinary sanction on the guardian or agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by first-class mail to the certified professional guardian or agency. Any such order shall be final.

117.7.5 If the guardian or agency does not file a petition requesting an administrative hearing, then the Board may impose disciplinary sanctions on the guardian or agency, as set forth without further notice to the guardian or agency. Notice of the Board's actions shall be sent to the guardian or agency by first-class mail.

117.8 Waiver

117.8.1 A guardian may request a waiver from the requirement in this regulation that the guardian maintain errors and omissions insurance. (The term "guardian" in this section refers to either an individual or an agency.) To be eligible for a waiver, the guardian must show that it is impractical for the guardian to obtain such insurance and that the guardian will provide a satisfactory alternative to such insurance.

117.8.2 It is impractical for a guardian to obtain errors and omissions insurance if a guardian provides documentation and verifies under penalty of perjury that the guardian has applied and has been rejected by at least two insurance carriers for errors and omissions coverage or that the guardian has had errors and omissions insurance cancelled by the insurance provider or underwriter.

A satisfactory alternative to such insurance is one which provides an adequate guarantee that any damages resulting from the unintentional errors and omissions of a guardian and its employees will be compensated in like amounts as the amount of coverage required under this regulation for errors and omissions insurance. Such alternatives may include a general purpose bond in the amount of \$500,000, or evidence of security in the amount of \$500,000, or such other alternative that provides for financial responsibility in the amount of \$500,000.

117.8.3 To request a waiver, the guardian must file a written petition with the Board stating why it is impractical for the guardian to obtain insurance and describing the alternative to insurance that the guardian will provide. The petition must be signed by the guardian under penalty of perjury. If the petitioner is an agency, one of the designated guardians for the agency must sign the petition. The petitioner must submit copies of the denial or cancellation of coverage received by the petitioner, and copies of the applications submitted by the guardian for said coverage. The petitioner may include other written materials in support of its petition. The petitioner must file the petition and supporting materials electronically with the Board unless permission is granted by the Board to file materials in a paper format.

117.8.4 Petitions will be reviewed by the Financial Responsibility Committee of the Board. The members of such committee shall be appointed by the Chair of the Board. The Chair of the Board shall designate one of the members as the Chair of the committee. The term of all members, including the Chair of the committee, shall be one year.

117.8.5 The Financial Responsibility Committee shall report to the Board on the merits of the petition.

117.8.6 The Board may approve the petition, with or without conditions, or refer the petition back to the Financial Responsibility Committee for additional information, or deny the petition.

117.8.7 If the Board denies a petition, the petitioner will be given written notice of the denial and the right to appeal under these regulations.

117.9 Right to Appeal the Board's Denial of a Waiver

117.9.1 Every petitioner shall have a right of appeal before an Appeals Panel.

117.9.2 A petitioner may appeal the Board's denial of a waiver of the insurance requirement in this regulation by submitting a written request to:

Certified Professional Guardian Board  
Administrative Office of the Courts  
PO Box 41170  
Olympia WA 98504-1170

The request must:

Be filed within sixty (60) calendar days of the date of the denial of the waiver by the Board;

Identify the petitioner; and

Explain fully the grounds on which the petitioner bases an appeal of the denial of waiver.

117.9.3 The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Financial Responsibility Committee. The Chair shall name one member of the panel as the chair of the panel.

117.9.4 The petitioner may submit to the AOC additional written material which may include statements, correspondence, affidavits, and memoranda of law or other information which the petitioner believes will assist the Appeals Panel in reviewing the denial of the waiver. All written materials must be received by the AOC within 30 days after the filing of the notice of appeal. AOC will supply the Appeals Panel with the appeal, all attachments, and all other material relating to the original petition for a waiver and the appeal.

The Appeals Panel may use written stipulations.

The date of review of the appeal will be not more than sixty (60) days from the date of receipt of the appellant's materials by the AOC. The AOC will notify the appellant of the scheduled date for the consideration of the appeal.

An Appeals Panel will not consider any request for appeal that does not strictly comply with the times stated, unless waived by the Appeals Panel. Upon a showing of good cause, the Appeals Panel may waive the time requirements.

The assigned Appeals Panel shall consider the written material submitted. The Appeals Panel may, in its sole discretion, make a decision based solely on the written record, or it may request an oral presentation by the appellant. The appellant shall be informed of the place, time, and duration of an oral presentation. Telephone conferences may be held at the discretion of the Appeals Panel.

Within twenty (20) days after the date of review of the appeal, the assigned Appeals Panel shall file with the AOC written findings of fact, conclusions of law, and a recommendation to the Board to approve or deny the appeal.

The AOC shall notify the petitioner of the findings, conclusions, and recommendation of the Appeals Panel within five (5) business days.

Within sixty (60) days, the Board shall review the findings, conclusions and recommendation of the Appeals Panel. No further oral or written argument will be allowed the parties, and no further evidence may be submitted to the Board. The Board shall adopt, modify, or reverse the findings, conclusions, and recommendation of the Appeals Panel. A copy of the Board's decision, as set forth in the minutes of the Board meeting or in a separate written decision of the Board, shall be served on the appellant by mail within 30 days.

- 117.10 An individual may not practice as a professional guardian unless he or she maintains errors and omissions insurance or has been granted a waiver by the Board except during any periods that the Board suspends the requirement to maintain errors and omission insurance.
- 117.11 Regulation 117 shall not apply to guardians or agencies if the Board determines that errors and omissions insurance is not generally available, is cost prohibitive, or for any other reason the Board decides to suspend the requirements of this regulation.

# Appendix B - Ethics Advisory Opinions

## PROFESSIONAL GUARDIAN PETITIONING FOR APPOINTMENT

Opinion: 2005-001

Date Approved: March 13, 2006

### **Brief restatement of question(s) posed:**

When may a Certified Professional Guardian petition for appointment of oneself as guardian?

Directly applicable Standards Of Practice (SOPs), statutes and other law or standards:

403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or conflicts of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

RCW 11.88.030 (1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis.

The facts alleged in a petition for guardianship are ordinarily verified under penalty of perjury by the petitioner.

GR 24 (a)(1) Practice of law defined as “Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.”

### **Analogous standards and values (e.g., legal, medical):**

The practice of nominating oneself as guardian automatically raises the appearance of self-dealing.

### **Analysis:**

The Certification Board recognizes that there are two public policy objectives underlying this opinion. The first is the public policy need to assure that individuals in need of a guardian have access to that service. The second public policy objective is to assure that the practice of the profession by certified professional guardians results in conduct which is not self-dealing and does not involve the actual or appearance of a conflict of interest. This ethical opinion is intended to recognize the inherent tension between these two public policy objectives and to reconcile those tensions in a manner that provides for the highest ethical practices while making available guardian services to those who need them. Professional guardians have a clear and immediate conflict of interest in nominating themselves to be appointed guardian and to be paid from the estate of the Incapacitated Person.

Ordinarily the facts necessary to complete a petition for guardianship are not available at first hand to a certified professional guardian but are provided by professionals interested in having a guardian appointed. The securing of a release of information from the alleged incapacitated person allowing the certified professional guardian access to those facts should be documented and provided to the certified professional guardian before the certified professional guardian gains access to those facts.

In many situations, and in particular in the case of Incapacitated Persons who have limited or no estate, there is no other person with sufficient expertise and interest in the Incapacitated Person to file a petition for guardianship. Referral sources such as facility staff or government employees who are able to identify the need for guardianship may have institutional limitations on their ability to become formally involved as a petitioner for the guardianship.

When the certified professional guardian meets with the alleged incapacitated person, great care must be taken to avoid minimizing the seriousness of guardianship proceedings or unduly influencing the impaired person to accept appointment of a guardian.

**Opinion:**

The following are considered to be the best practices for certified professional guardians:

A certified professional guardian should avoid whenever possible the initiation of initiating a petition for appointment of oneself as guardian.

The certified professional guardian should inform referral sources as to how guardianships are processed and should offer to refer interested parties to counsel if necessary. However, petitioners for individuals with no close family or friends, limited assets, living in long term care environments, and/or with complicated care needs are often not available. As a result, the practical reality of the care environment is such that the availability of petitioners for those in need of a guardian is limited or non-existent. Therefore, the limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances. Specifically, if the certified professional guardian determines that a guardianship is in the interests of the Alleged Incapacitated Person, that there are no less restrictive alternatives, and no other person willing to act as petitioner, the certified professional guardian may act as petitioner in a guardianship. However, in initiating such petition the certified professional guardian should:

- A. when reviewing information or records of an alleged incapacitated person a certified professional guardian should verify that a proper release of information has been provided by the alleged incapacitated person.
- B. in most cases in which the certified professional guardian acts as petitioner the certified professional guardian should refrain from nominating oneself as guardian but should ask the court to direct the guardian ad litem to recommend an appropriate guardian. In the case of a certified professional guardian with an active prior relationship with the alleged incapacitated person, such as acting as trustee or Attorney-in-Fact, nominating oneself may be acceptable.
- C. Any time that a certified professional guardian initiates a guardianship petition the certified professional guardian shall, consistent with state statute, engage in an investigation and document that investigation in an Affidavit or Declaration to the Court the following pre-filing efforts:
  1. identifying any alternative nominees and provide information as to why alternate nominees who are available are not suitable or able to serve;
  2. providing a written request from the party requesting the guardianship which identifies the basis for the request and, the basis for the decision by that party not to petition;

3. providing documentation from third parties of the facts set out in the petition. Such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person.
  4. providing documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person.
  5. providing an assessment by the certified professional guardian as to the availability of less restrictive alternatives, such as the establishment of a trust or power-of-attorney, and why those less restrictive alternatives do not adequately provide for the needs of the alleged incapacitated person.
- D. An in-person meeting between a certified professional guardian and an alleged incapacitated person is appropriate when the certified professional guardian is gathering information. However, when the certified professional guardian meets with the alleged incapacitated person and imparts information about guardianship or the benefits of guardianship the certified professional guardian should:
1. inform the alleged incapacitated person that guardianship is a serious legal matter and, should recommend consultation with an attorney;
  2. avoid making a recommendation or giving advice;
  3. not solicit the alleged incapacitated person's consent to proceed with a guardianship.
- E. If a care facility and a certified professional guardian have a relationship or a practice of the facility referring residents to the certified professional guardian, this relationship shall be disclosed and described in detail in the Petition.

There are circumstances in which a care provider or other entity with whom the certified professional guardian has a close personal or professional relationship files a petition for guardianship using an attorney provided by the certified professional guardian, or files a petition for guardianship with the active assistance of the certified professional guardian, with the intention that the certified professional guardian will become guardian at the conclusion of the proceeding. In such circumstances, the certified professional guardian has an obligation to disclose to the Court by Affidavit or Declaration the nature of that relationship.

This opinion acknowledges that the Court with local jurisdiction is the final arbiter as to the need for a guardianship and the appointment of the guardian. The intent of this opinion is not to discourage the filing of the petitions in good faith. It is the intent of this opinion however, to assure the transparency of the proceedings to the extent that any conflicts or appearances of conflict which a certified professional guardian may have are disclosed and that steps are taken to negate both the real and appearance of self-serving. The petitioning certified professional guardian should be aware of the Court's ability to require the petitioner to pay any or all fees and costs of proceedings at the Court's discretion, including the fees of the guardian ad litem.

## **PREAPPOINTMENT CONDUCT**

Opinion: 2005- 003

Date Approved: November 13, 2006

### **Brief restatement of question(s) posed:**

Should a certified professional guardian (CPG) provide services to an alleged incapacitated person (AIP) after a petition for the appointment of a guardian has been filed, or immediately prior to the filing of such a petition, prior to a determination of incapacity by the court, where no contractual or legal relationship existed between the certified professional guardian and the AIP prior to the filing of a guardianship petition, and the guardian expects to be compensated for those services?

### **Directly applicable standards of practice (SOP's), statutes, and other law or standards:**

401.4 The guardian shall not act outside of the authority granted by the court.

403.1 The guardian shall avoid self-dealing, conflict of interest and the appearance of a conflict of interest. Self-dealing or conflict of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.

401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, General Rule (GR) 23, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

RCW 11.88.005 Legislative intent: It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.88.030 (1): A petition for guardianship or limited guardianship shall state: .(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.

RCW 11.88.045(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person.

RCW 11.88.090 [The Guardian ad litem shall have the following duties..][to ascertain]

(5)(c)(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(5)(e) to investigate alternate arrangements made or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(5)(f) To provide the court with a written report which shall include the following:

(iv) a description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(9) The court appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020m or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

#### RCW 74.34 Abuse of Vulnerable Adults

.005(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

.005(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.

#### **Analysis**

Guardianships are commonly sought in situations in which there is an immediate problem affecting a principal prior to the decision by a Court as to whether or not the person is, in fact, incapacitated. Certified Professional Guardians are often asked to develop and implement a plan of care in such situations which precede a decision by the Court as to the need for the establishment of a guardianship.

Certified professional guardians commonly offer a spectrum of services which are recognized by statute as less restrictive alternatives to guardianships. Some of these services require the written consent of the principal, such as powers of attorney, creation of a Trust, signatures on consent forms relating to health care, and signatures and agreements in regards to contracts and financial service agreements.

Some less restrictive alternatives may not necessarily require the written agreement of the principal. Situations in which such agreement(s) commonly occur include competent acceptance by the principal of the provision of care management and in-home assistance services.

**Opinion**

At any time, including the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian, certified professional guardians (CPG) are encouraged to provide forms of assistance that are least restrictive and that have the potential to avoid the need for a guardianship when that assistance is consented to by the principal, provided that the principal has the requisite capacity to consent and, if needed, access to legal counsel. Forms of assistance often needed include arranging for in-home care, home maintenance, and assistance in organizing and paying bills.

When a CPG is entering into a formal legal relationship with a principal, such as a living trust or power of attorney, the CPG should assure that the principal has the benefit of independent legal counsel before entering the relationship. A CPG who is also an attorney should not prepare or assist in the preparation of power-of-attorney, living trust, a Will, or similar legal documents which appoint themselves to a fiduciary relationship with the principal.

During the period immediately preceding or subsequent to the filing of a petition for the appointment of a guardian there is a conflict of interest or the appearance of a conflict of interest and self dealing when any person enters into an agreement for services with an alleged incapacitated person that requires consent. While recognizing that the alleged incapacitated person has the legal capacity to enter into contracts until a guardian is appointed or otherwise restricted at the time a guardianship is established, the certified professional guardian should exercise caution when entering into any arrangement with the alleged incapacitated person immediately preceding or subsequent to the filing of a guardianship petition.

During the period immediately preceding to or subsequent to the filing of a petition for the appointment of a guardian, the CPG may be asked by family or friends of the principal, or may contract with family or friends of the principal, to provide case management assistance such as help with living arrangements and in-home care, or assistance with immediate financial matters such as the payment of rent or utility bills, during the period immediately preceding or subsequent to the filing of a guardianship petition. The CPG should decline to provide such services unless the principal has the capacity to consent to the services or the court has authorized the guardian to provide services. In such a circumstance, the principal's acceptance and/or cooperation with services can be reflective of the principal's consent.

Any fees that are charged by the certified professional guardian should be carefully documented. No fees should be accepted from the funds of the principal subsequent to the filing a petition for the appointment of a guardian unless approved by the court in the same manner as guardian fees.

The certified professional guardian should avoid the appearance of assuming the formal duties of a guardian in advance of appointment. The certified professional guardian should not marshal assets, become a signature to financial accounts, make medical decisions or financial commitments, or otherwise engage in the activities commonly associated with the powers of a guardian for an alleged incapacitated person subsequent to the filing of a petition for the appointment of a guardian or during the period immediately preceding the filing of such petition.

## **RETENTION OF RECORDS**

Opinion 2005-004

Date Approved: September 11, 2006

### **Brief restatement of question(s) posed:**

How long should a certified professional guardian retain client records?

### **Directly applicable Standards of Practice, statutes, and/or other law or standards:**

A guardian who has been discharged in a guardianship matter is expected to transfer assets and information to the successor guardian or personal representative in good order. Subsequent to discharge and transfer of assets and information, the retention of records benefits the incapacitated person and may protect the guardian against future allegations of misconduct or to explain the general management of the guardianship, such as in a probate proceeding or tax audit.

No specific standards of practice have been adopted by the Certified Professional Guardian Board to guide guardians in their decisions as to the retention of client records subsequent to their discharge as guardians. However, the premature destruction of records has the risk of complicating the management of a guardianship practice. Records which support decisions made by the guardian may be needed long after the conclusion of a guardianship and the discharge of the guardian. Consequently, retention of essential records either electronically or as paper in a secured and safe storage area for an indefinite time period is a matter to be determined, after consultation with an attorney, by the individual guardian.

# Appendix C - Grievances

## Grievances Filed in 2006

CPGB Case Number	Members of Review Panel	County	Nature of Allegations	Disposition
2006-001	None	King	Mismanagement of funds.	Dismissed by Standards of Practice Committee (SOPC). The SOPC concluded that the actions taken by the guardians did not constitute grounds for discipline under the Disciplinary Regulations for certified professional guardians. The actions of the guardians were approved by the superior court with jurisdiction over the guardianship case. No further action was taken by the Board.
2006-002	None	Mason		This was a grievance concerning a guardian ad litem and not a certified professional guardian.
2006-003 2006-006 (companion cases)	Hank Hibbard  Michael Longyear  Sharon York	Spokane	Failure of guardian to file some reports with court; failure to document time spent in one case.	Review Panel appointed and is investigating.
2006-004	None	Spokane		Not grounded – failed to identify a standard or practice issue and thus was not investigated by the Board. Grievance was returned to grievant without action.

<b>CPGB Case Number</b>	<b>Members of Review Panel</b>	<b>County</b>	<b>Nature of Allegations</b>	<b>Disposition</b>
2006-005	None	Pierce	Removal of IP from care facility AMA (against medical advice)	The SOPC is gathering more information from guardian and others on why this happened.
2006-006				See 2006-003 above
2006-007	None	King	Guardian accused of taking property from the incapacitated person.	The SOPC did not accept the grievance because the person complained about was no longer a certified professional guardian. The issue was referred to King County Superior Court.
2006-008	None	King	Failure of guardian to locate relatives before IP passed away; personal representative is spending too much money to administer the probate estate and it is taking too long.	Dismissed by the SOPC, which stated that the statutory duty to locate relatives is placed on the GAL. Both the GAL and the professional guardian attempted to locate relatives before the IP died (this was a relatively short guardianship). Relatives had not been in contact with the IP for some time and were difficult to find. The SOPC felt that guardian had done what it could in that regard. The guardian was then appointed to administer the probate estate. The Board has no jurisdiction over probate cases. The grievant is represented by counsel in the probate matter and should address those issues to the probate court.
2006-009	None	King		Dismissed Administratively. The grievant refused to provide the name of the incapacitated person. Research determined that the person being complained about was acting as an attorney and not a certified professional guardian.

# Who We Are

## Board

**Judge Vicki Hogan, Chair**  
Pierce County Superior Court  
Term ends 9/30/2007

**Commissioner Fred Aronow, Vice Chair**  
Spokane County Superior Court  
Term ends 9/30/2008

**Ms. Robin H. Balsam**  
Attorney, Balsam McNallen LLP  
Representative of the Washington State Bar Association  
Term ends 9/30/2007

**Ms. Ree Ah Bloedow**  
Legal Benefits Attorney  
Representative of the Dept. of Social Health Services  
Term ends 9/30/2008

**Dr. Ruth F Craven, EdD, RN, FAAN**  
Professor and Associate Dean  
University of WA School of Nursing  
Term ends 9/30/2007

**Mr. Raymond Dingfield**  
Senior Advocate  
Term ends 9/30/2007

**Judge M. Karlynn Haberly**  
Kitsap County Superior Court  
Term ends 9/30/2009

**Mr. Hank Hibbard**  
Attorney at Law  
Term ends 9/30/2008

**Mr. John Jardine**  
Certified Professional Guardian  
Term ends 9/30/2007

**Mr. Michael J. Longyear, Attorney**  
Reed, Longyear, Malnati, & Ahrens  
Representative of the Washington State Bar Association.  
Term ends 9/30/2008

**Ms. Deborah A. Murphy, MPA, J.D.**  
Chief Executive Officer  
Washington Association of Housing & Services for the Aging  
Term ends 9/30/2009

**Ms. Lori A. Petersen**  
Certified Professional Guardian  
Term ends 9/30/2009

**Commissioner Kimberley Prochnau**  
King County Superior Court  
Term ends 9/30/2008

**Professor Winsor Schmidt, J.D., LL.M.**  
Chair and Professor  
Dept. Health Policy & Admin., Washington State University  
Term ends 9/30/2009

**Ms. Elizabeth A. Turner**  
Attorney  
Term ends 9/30/2009

**Judge Marywave Van Deren**  
Court of Appeals Division II  
Term ends 9/30/2009

**Judge Chris Wickham**  
Thurston County Superior Court  
Term ends 9/30/2008

**Ms. Suzanne Thompson Winger**  
Residential Care Services  
DSHS Region 6  
Term ends 9/30/2009

**Ms. Sharon York**  
Arc of Washington  
Term ends 9/30/2008

# Who We Are

## Staff

### **Shirley Bondon**

Administrative Office of the Courts  
PO Box 41170  
Olympia WA 98504-1170  
[shirley.bondon@courts.wa.gov](mailto:shirley.bondon@courts.wa.gov)  
(360) 705-5302  
(360) 586-8869 FAX

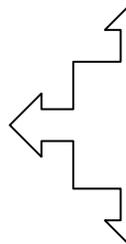
### **Primary Contact**

### **Lynne Alfasso**

Administrative Office of the Courts  
Temple of Justice  
PO Box 41174  
Olympia WA 98504-1174  
[lynne.alfasso@courts.wa.gov](mailto:lynne.alfasso@courts.wa.gov)  
(360) 357-2157  
(360) 357-2127 FAX

### **Sylvia Nelson**

Administrative Office of the Courts  
PO Box 41170  
Olympia WA 98504-1170  
[sylvia.nelson@courts.wa.gov](mailto:sylvia.nelson@courts.wa.gov)  
(360) 705-5282  
(360) 586-8869 FAX



*"Do not forget the hands of the aged; they have touched much of life and have become sensitive and sympathetic."*

----Anonymous