CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF: MARSHA CALDWELL, CPG NO. 9594, Respondent.	PGB NO. 2007-007(B) DISCIPLINARY SETTLEMENT AGREEMENT

The parties, Marsha Caldwell (Ms. Caldwell), a certified professional guardian, and the Certified Professional Guardian Board (Board) hereby enter into this Disciplinary Settlement Agreement (Agreement) pursuant to Disciplinary Regulation (DR) 506 for Certified Professional Guardians. It is alleged by the Board that Ms. Caldwell committed violations of the Standards of Practice for Certified Professional Guardians. This Agreement is intended to be a resolution of those allegations and shall become effective after all parties have affixed their signatures and the Agreement has been approved by the Board. Decertification shall be effective upon order of the Washington Supreme Court. This Agreement is binding as a statement of all known facts relating to the conduct of Ms. Caldwell, as qualified in Section VI. below. The Agreement will become part of the permanent professional guardian licensing records of Ms. Caldwell and will be a public record and subject to public access.

I. PROCEDURAL BACKGROUND

On or about March 12, 2007, a written complaint was filed with the Board alleging misconduct by Ms. Caldwell and the guardianship agency for which she worked, Kuehn and

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Caldwell Guardian Care and Consulting (Kuehn and Caldwell), in the case of *Guardianship of* E . Pursuant to the Disciplinary Regulations, the complaint was reviewed by the Board's Standards of Practice Committee (SOPC). The SOPC recommended that the Chair of the Board appoint a Review Panel to investigate this matter, pursuant to DR 506. The Chair of the Board appointed a Review Panel to investigate the allegations in the complaint. On April 25, 2007, Ms. Caldwell provided a written response to the Review Panel's questions concerning her handling of E's estate. On June 22, 2007, Ms. Caldwell and the Board entered into an Agreement Regarding Discipline. However, the Board notified Ms. Caldwell's counsel on October 2, 2007, that they sought additional information concerning the Matter of the *Guardianship of* R , several Department of Social and Health Services (DSHS) cases, and information concerning a possible violation of the Agreement Regarding Discipline. On October 10, 2007, Ms. Caldwell again provided information to the Review Panel. As a result of the new allegations, the Review Panel continued its investigation. On October 31, 2007, the Board notified Ms. Caldwell that they believed she was in violation of the terms of her Agreement Regarding Discipline.

On December 17, 2007, the Review Panel filed a Formal Complaint against Ms. Caldwell. Ms. Caldwell, through counsel, filed an Answer to the Formal Complaint.

II. FACTUAL BACKGROUND

A. General Facts

1. At all times relevant to this matter, Ms. Caldwell was a certified professional guardian pursuant to General Rule of Court (GR) 23, licensed as CPG #9594. Ms. Caldwell had final decision-making authority for incapacitated persons on behalf of Kuehn and Caldwell. Kuehn and Caldwell's other certified professional guardian was Kathy (Mary) Kuehn.

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2. Kathy Kuehn was decertified as a professional guardian in September 2007. Kuehn and Caldwell was also decertified as a professional guardianship agency in September 2007.

B. *In re the Guardianship of E*.

1. On April 14, 2004, Ms. Caldwell petitioned the Kitsap County Superior Court for appointment as the guardian for the person and the estate of E. Ms. Caldwell and Kuehn and Caldwell were appointed by the court as guardians on April 30, 2004.

2. In the court's order appointing Ms. Caldwell as guardian, the court ordered that Ms. Caldwell file an initial inventory of E's assets and file a personal care plan within three months of appointment. In addition, the court ordered that Ms. Caldwell was to have access to only $7,000 from a particular account of the estate and that the rest of E's accounts were to be blocked. Finally, the court ordered that Ms. Caldwell file a $25,000 bond by May 5, 2004.

3. Ms. Caldwell filed the initial inventory and personal care plan over one month late. In addition, Ms. Caldwell did not block any of E's accounts and withdrew from the specified account more than the $7,000 allocated by the court. Further, Ms. Caldwell did not file the required bond with the court until October 2006. Thus, the E estate was unprotected by any surety bond for over two years.

4. Pursuant to statute and the court's appointment order, Ms. Caldwell was to file a yearly accounting of the assets of E's estate. The yearly accounting was to be filed three months after the first anniversary of the appointment. Ms. Caldwell failed to timely file the yearly accounting for the 2004-2005 year for E's estate. Further, Ms. Caldwell failed to file any yearly accounting for the 2005-2006 period.

5. E had been moved to a nursing home on Bainbridge Island called Messenger House Care Center (Messenger House) where she had been residing since 2004. In February 2006, Messenger House filed a creditor's claim with E's estate

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seeking over $15,000 for past due amounts. By May 2006, this amount had grown to almost $34,000. Ms. Caldwell had failed to timely pay the just claims of E's estate.

6. In July 2006, the court entered an order allowing Ms. Caldwell to sell E's condominium located on Bainbridge Island, Washington. On August 11, 2006, the court provided a further order directing the sale of the condominium. However, on August 24, 2006, Ms. Caldwell closed the real estate transaction and transferred the deed to the condominium to the purchasers. As a result, certain closing costs and fees were incurred by E's estate. It was not until September 20, 2006, the court actually confirmed the sale of the condominium. The court issued an order "authorizing the Guardian to pay, out of the proceeds realized from the sale of said property, or out of the state, the customary and reasonable expenses for title insurance, real estate taxes, revenue, revenue stamps, excise tax, brokerage fees, and closing costs in connection with the said sale...." At no point did Ms. Caldwell notify the court that she had already disbursed the funds nor did she inform the court that the transaction had already been completed. This transaction should not have been completed until after the court issued the order confirming the sale. Thus, Ms. Caldwell sold E's condominium without proper court authorization.

7. In addition to the unauthorized sale of the condominium, Ms. Caldwell never reported the profits of the condominium sale to the court as was required of her whenever there was a substantial change in the assets of the estate.

8. When Messenger House filed its initial creditor's claim, it moved the court to have Ms. Caldwell removed as guardian from E's estate. In response to that request a guardian ad litem was appointed by the court to investigate the allegations against Ms. Caldwell. On March 8, 2007, Judge Anna M. Laurie of the Kitsap Superior Court issued a memorandum opinion finding that Ms. Caldwell and Kuehn and Caldwell had violated past court orders regarding the failure to file a bond, failure to block accounts and provide security for liquid assets, delayed on obtaining spending authorization, delayed in filing accountings,

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and failed to report significant changes in assets. Judge Laurie also found that Ms. Caldwell sold E's condominium without proper court authorization and failed to timely file accountings and failed to file said accountings in the proper form. Finally, Judge Laurie found that Ms. Caldwell and Kuehn and Caldwell had paid themselves $21,292.91 from E's estate. Judge Laurie found that of that total, only $9,511.66 was an appropriate fee. Thus, Judge Laurie entered a finding against Kuehn and Caldwell for the amount of $11,531.25 that was to be repaid to the E estate. After issuing this order, Judge Laurie filed a grievance against Ms. Caldwell that resulted in the present action.

9. Standards of Practice Regulation (SOP) 401.1 states that "[t]he guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person." Pursuant to RCW 11.92.040 and RCW 11.92.043, within three months after appointment, the guardian must file a verified inventory of all the property of the incapacitated person and a personal care plan for the incapacitated person.

10. SOP 401.3 states that "[t]he guardian shall provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court."

11. SOP 401.4 states that "[t]he guardian shall not act outside of the authority granted by the court."

12. SOP 406.1, states that "[t]he guardian shall know and obey the law related to managing an incapacitated person's estate."

13. SOP 406.2 states that "[t]he guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court."

14. SOP 406.3, states that "[t]he guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person."

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15. SOP 408 states that "[i]n each guardianship, the guardian shall comply with the requirements of the court that made the appointment."

16. SOP 408, states that "[t]he guardian shall perform duties and discharge obligations in accordance with current Washington law governing certification of guardian."

17. RCW 11.88.100 states that "each guardian or limited guardian shall...unless dispensed with by order of the court as provided for in RCW 11.88.105, file a bond, with sureties approved by the court, payable to the state, in such sum as the court may affix."

18. RCW 11.92.035, which provides that "[a] guardian of the estate is under a duty to pay from the estate all just claims against the estate of the incapacitated person, whether they constitute liabilities of the incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts."

19. RCW 11.92.043 states that "[i]t shall be the duty of the guardian or limited guardian of the person: (1) To file within three months after appointment a personal care plan for the incapacitated person...."

20. RCW 11.92.090(3) states that "[t]he guardian or limited guardian shall report any substantial change in income or assets of the guardian estate within thirty days of the occurrence of the change."

21. Ms. Caldwell's failure to comply with a court order by untimely filing a personal care plan, inventory, and annual accountings violated SOPs 401.1, 401.3, 408 and RCW 11.92.043.

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22. Ms. Caldwell's failure to block a specified account and then withdrawing money from that account in excess of that authorized by the court violated SOPs 401.1, 401.4, 406.2 and 408.

23. Ms. Caldwell's failure to timely file the proper bond with the court by a specific date violated SOPs 401.1, 406.2, 408 and RCW 11.88.100.

24. Ms. Caldwell's failure to timely pay Messenger House for the cost of E's room and board along with associated and care violated SOPs 401.1, 406.1, 406.3, 408 and RCW 11.92.035.

25. Ms. Caldwell's failure to obtain all necessary orders for the sale of E's condominium violated SOPs 401.1, 401.4 and 408.

26. Ms. Caldwell's failure to inform the court of a substantial change in the assets of E's estate after the sale of the condominium violated SOPs 401.1, 401.3, 408 and RCW 11.92.090(3).

B. *In re the Guardianship of R*

1. On August 11, 2006, Ms. Caldwell and Kuehn and Caldwell were appointed as successor limited guardians of the estate of R.

2. On August 11, 2006, the court's appointment order specified that Letters of Guardianship were to be issued to Kuehn and Caldwell upon the filing of the required oath and a $100 bond. On September 15, 2006, the court modified this order to require that Kuehn and Caldwell obtain a $10,000 bond.

3. In January 2007, Scott Thomason, R's landlord, notified Ms. Caldwell that rent payments in the amount of $1,538 were past due for the months of November and December 2006 and January 2007. In October 2006, Ms. Caldwell had negotiated an arrangement whereby she was to pay Mr. Thomason $400.00 per month for rent. In his January 2007 letter, Mr. Thomason complained that the check that was written by Ms. Caldwell in November had bounced due to insufficient funds in the account. Another check

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was written in December and that check too bounced due to insufficient funds. January's rent had not been paid at all.

4. In March 2007, the Washington State Office of the Attorney General filed a motion for Ms. Caldwell to show cause why she should not be removed from R's case. The Attorney General's Office based the motion on Ms. Caldwell's failure to file the oath of guardianship and the failure to file the $10,000 bond as ordered by the court. The same day, the court issued an emergency order suspending Ms. Caldwell and Kuehn and Caldwell from this case for her failure to file the oath of guardianship and the $10,000 bond.

5. RCW 11.88.100, states that "[b]efore letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath...."

6. Ms. Caldwell's failure to timely pay Scott Thomason for the cost of R's rent violates SOPs 401.1, 406.1, 406.3, 408 and RCW 11.92.035.

7. Ms. Caldwell's failure to sign the oath of guardianship and file the required bond violates SOPs 401.1, 406.2, 408 and RCW 11.88.100 (both for failure to file the required bond and failure to file oath of guardianship).

C. Violations of Agreement Regarding Discipline

1. In May 2006, Kuehn and Caldwell was appointed as guardian of the estate and person for A and C1. In June 2006, Kuehn and Caldwell was appointed as guardian of the person and estate of C2.

2. On August 16, 2007, Ms. Kuehn filed notice to the court stating that she was no longer acting as a certified professional guardian for Kuehn and Caldwell on each of the three cases. On August 31, 2007, Ms. Kuehn filed her resignation as guardian for these three cases and requested that a successor guardian be appointed.

3. On August 31, 2006, Ms. Caldwell filed declarations seeking to be appointed as a successor guardian for A, C1, and C2. In her declaration for all three cases Ms. Caldwell stated:

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> I am the Certified Professional Guardian who has worked on this case since [the] original ruling by this court [in] May 2006. My name is on the Letters of Guardianship and I am willing to continue in this capacity.
>
> I have the necessary history and professional abilities to continue without disruption to the client or his living situation. I have obtained a Stand-by guardian of Mr. Dewey Abbott. Mr. Abbott is also a Certified Professional Guardian. His license number is CPG 010068.

4. At the August 31, 2007 hearing on these three cases, the court denied Ms. Caldwell's request to be appointed as successor guardian.

5. Paragraph II.B. of Ms. Caldwell's Agreement Regarding Discipline provided that "[i]f the superior court appoints a successor guardian on any of the Kuehn and Caldwell Agency cases, Ms. Caldwell may not accept appointment as the successor guardian, either individually or as a designated CPG (certified public guardian) for another agency." Under paragraph II.A. she had also agreed not to accept any new appointments as a guardian, either individually or on behalf of an agency.

6. DR 513.4 states that "[f]ailure of a respondent to comply with the terms of an Agreement Regarding Discipline may constitute additional grounds for discipline."

7. Ms. Caldwell acknowledges that there is sufficient evidence for the Board to find a violation of paragraph II.B. of the Agreement Regarding Discipline when she sought to be a successor guardian in the matters of *In re the Guardianship of* A, *In re the Guardianship of* C1, and *In re the Guardianship of* C2. Ms. Caldwell acknowledges that there is sufficient evidence to sustain a violation of SOP 401.1.

D. <u>Contempt of Court Orders</u>

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1. Kuehn and Caldwell had been previously appointed as the guardian agency for *In re the Guardianship of* B, *In re the Guardianship of* D, *In re the Guardianship of* F, and *In re the Guardianship of* H.

2. In August 2007, the court ordered that Ms. Caldwell was to turn over all financial records on those four cases to Ms. Kuehn's attorney within fifteen (15) days.

3. On November 2, 2007, Ms. Caldwell was held in contempt of court for failing to turn over the required documents. Ms. Caldwell acknowledges that there is sufficient evidence to sustain a violation of SOPs 401.1, 401.3 and 408.

E. Failure to have two certified professional guardians for Kuehn and Caldwell

1. GR 23(d)(2)(ii) states that all guardian agencies "shall have at least two (2) individuals in the agency certified as professional guardians."

2. In October 2006, Ms. Kuehn ceased being a second certified professional guardian for Kuehn and Caldwell. Ms. Kuehn did handle several matters for clients of Kuehn and Caldwell that she had worked directly with, but she was not an active guardian for the agency after October 2006.

3. Ms. Caldwell failed to notify the courts on *In re the Guardianship of* E, *In re the Guardianship of* R, *In re the Guardianship of* A, *In re the Guardianship of* C1, and *In re the Guardianship of* C2 that Kuehn and Caldwell did not have two certified professional guardians for the agency. This action violated GR 23(d)(2)(ii) and SOP 401.1.

III. PRIOR RECORD OF DISCIPLINE

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Ms. Caldwell has a prior record of discipline with the Board. On or about June 22, 2007, a Disciplinary Agreement in Board Case No. PGB NO. 2007-007(B) was filed with the Board. In that Agreement, the Board imposed a suspension from taking new cases or serving as a successor guardian to Kuehn and Caldwell cases.

IV. DISCIPLINARY SANCTIONS

The parties stipulate and agree to the following disciplinary sanctions for the conduct described in this Agreement:

A. **Decertification.** Ms. Caldwell shall be decertified as a certified professional guardian. Decertification shall be final upon acceptance of this Agreement and issuance of final order of the Supreme Court.

1. Pursuant to DR 521.4.4., following decertification, Ms. Caldwell shall not accept any new appointments or engage in work as a certified professional guardian in any matter, except to assist in the orderly transfer of cases.

2. Pursuant to DR 521.4.1., the Supreme Court's order shall include provisions providing for the immediate referral of this matter to the superior court of each county.

3. Pursuant to DR 517.1., Ms. Caldwell may not resume work as a certified professional guardian (as defined in RCW 11.88.008) until she has complied with all orders for sanctions, and only upon written confirmation by the Board or order of the Supreme Court. In addition, pursuant to DR 517.2., Ms. Caldwell may not petition for reinstatement as a certified professional guardian until five (5) years after decertification. Ms. Caldwell may continue to serve as a guardian on cases as long as she does not meet the definition of a "professional

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guardian" as defined in RCW 11.88.008. Ms. Caldwell may continue to serve as a guardian for M and G (case numbers contained in Appendix 1).

4. Pursuant to DR 521.4.3., Ms. Caldwell shall, within ten (10) days of decertification, send letters of notification by first class mail all parties entitled to notice in any active or pending guardianship matters of the decertification and the effect of that on the client.

5. Pursuant to DR 521.4.5., Ms. Caldwell shall file with the Administrative Offices of the Court (AOC) within ten (10) days after the effective date of the decertification by the Supreme Court both of the following:

a. An affidavit attesting to full compliance with the provisions of the Supreme Court's order and all Disciplinary Regulations. Such affidavit shall also contain Ms. Caldwell's current mailing address.

b. A copy of the letter of notification sent to all parties entitled to notice, together with a list of the names and addresses of all persons to whom the notice was sent.

B. **Costs.** Ms. Caldwell shall be responsible for the payment of the investigative costs of the Board in this matter, in the amount of $722.40. Such costs shall be paid within sixty (60) days of the date this Agreement is approved by the Board.

IV. VIOLATION OF AGREEMENT

Failure to comply with the terms of this Agreement may constitute additional grounds for discipline pursuant to DR 513.4. In the event of an alleged breach of this Agreement, the Board shall provide notice of the substance of the breach, and the respondent shall have thirty (30) days to respond to the allegations of breach. If a breach of this Agreement is found, the

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Board reserves the right to commence further investigation or issue a formal complaint as outlined in Section VI. of this Agreement.

V. WAIVER OF RIGHTS

A. Ms. Caldwell hereby waives her right to a hearing on this matter. This waiver includes a waiver of the right to be present at any hearing, to have subpoenas issued on her behalf, to take depositions and conduct other prehearing discovery, and the right to present testimony at a hearing.

B. Ms. Caldwell further waives any and all appeal or petition for judicial review of this matter. This includes a waiver of the right to submit matters to the Supreme Court prior to any final order decertifying Ms. Caldwell.

C. Ms. Caldwell's has waived these rights knowingly and voluntarily after having been afforded the right to consult with counsel.

VI. SETTLEMENT OF ALL PENDING MATTERS BEFORE BOARD

A. This Agreement is intended to resolve all matters regarding Ms. Caldwell's conduct as a certified professional guardian currently known to the Board. This includes all matters that are currently the subject of the formal complaint and all matters currently under investigation that are not yet part of any formal complaint. A list of cases currently known and/or under investigation are attached and incorporated herein as Appendix 1. In exchange for entering into this Agreement, the Board agrees to suspend further investigation of Ms. Caldwell's conduct and agrees not to amend or initiate any further formal complaints for all cases contained in Appendix 1, subject to the following provision.

B. In the event that Ms. Caldwell is determined to have breached this Agreement, the Board shall have the right, without limitation, to direct further investigation or initiate a

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formal complaint for any matter contained in Appendix 1 or any new matter of which they become aware.

VII. ENTIRE AGREEMENT

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and any other agreement, statement, or promise made by any party that is not included herein shall not be binding or valid. This Agreement may be modified or amended only by written amendment signed by all parties.

VIII. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is determined to be illegal or invalid for any reason, the remainder of this Agreement will not be affected.

IX. LAWS GOVERNING

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and may be subject to public disclosure or release, along with the Board's investigative files in this matter.

X. RIGHT TO COUNSEL

Ms. Caldwell acknowledges that she has the right to individual counsel to represent her in this disciplinary matter at her own expense, as set forth in DR 508. Ms. Caldwell acknowledges that she has consulted with counsel, or has had the opportunity to do so.

XI. AGREEMENT SUBJECT TO BOARD'S APPROVAL

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The parties understand that this Agreement is subject to approval by the Board. In the event that the Board does not approve this Agreement, the Board shall not be precluded or limited in any way from acting on this case in any manner provided for under applicable statute, rule, and regulation.

STIPULATED AND AGREED this 1st day of ~~March~~ April, 2008.

ROBERT M. MCKENNA
Attorney General

THEODORE M. MILLER, WSBA #39069
Assistant Attorney General
Attorneys for Washington State Certified Professional Guardian Board

MARSHA CALDWELL
Certified Professional Guardian, #9594

WILLIAM H. BROUGHTON, WSBA #8858
Broughton & Singleton, Inc., P.S.
Attorney for Marsha Caldwell

The Certified Professional Guardian Board hereby approves this Disciplinary Settlement Agreement. Further, the Certified Professional Guardian Board recommends that Marsha Caldwell be decertified as a professional guardian.

DATED this 18 day of April, 2008.

Judge Marywave Van Deren
Chair, Certified Professional Guardian Board

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You may request a copy of

APPENDIX 1 to the DISCIPLINARY SETTLEMENT AGREEMENT in
Marsha Caldwell, CPG No. 9594, PGB No. 2007-007(B)

By sending an email to: Sharon.Eckhom@courts.wa.gov or guardian.program@courts.wa.gov

Or by calling the Certified Professional Guardian Program at (360) 704-4031 or (360) 705-5282