CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF: PETER CZERNISKI	**CPGB NO. 2008-012** **FINDINGS OF BOARD**

The Certified Professional Guardian Board (Board) finds that the guardian's obligations pursuant to the Settlement Agreement Regarding Discipline adopted on November 3, 2008:

☒ have been satisfied and that the disciplinary matter, CPGB No. 2008-012, be closed.

☐ other

_____

_____

DATED this 11 day of May, 2009.

Certified Professional Guardian Board

By: Sharon Eckholm

Sharon Eckholm, AOC Liaison to the Board

Certified Professional Guardian Board
Administrative Office of the Courts
1206 Quince Street SE
P.O. Box 41170
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FILED BY CPG BOARD

NOV 10 2008

CERTIFIED PROFESSIONAL GUARDIAN BOARD

PETER CZERNISKI, CPG #9947	)	PGB No. 2008-012
	)	AGREEMENT REGARDING DISCIPLINE AND STIPULATED FINDINGS
	)	*Disciplinary Regulation 514*

The parties, Peter L. Czerniski, CPG No. 9947, and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. Peter Czerniski (Mr. Czerniski) has committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian record of Mr. Czerniski and will be a public record and subject to public access. This Agreement will be posted on the Certified Professional Guardian Board website, which is maintained by the Administrative Office of the Courts.

ORIGINAL

1. JURISDICTION

1.1 At all times relevant herein, Mr. Czerniski was a certified professional guardian (CPG) pursuant to General Rule of Court (GR) 23, licensed as CPG #9947.

2. STATEMENT OF FACTS

2.1 On or about June 16, 2008, the Board opened a grievance, PGB No. 2008-012, based on a complaint about Mr. Czerniski's role as trustee in a Special Needs Trust. The Board has no jurisdiction over the actions of a trustee and the matter was dismissed for lack of jurisdiction. As a part of the investigation to determine if the grievance involved a trust or guardianship matter, a review of Mr. Czerniski's cases was conducted.

over the trust but the Board has authority over CPGs in executing actions regarding guardianship matters. MW 11/3/08 PRC 11/7/08

2.2 On August 18, 2006, Mr. Czerniski self petitioned to be appointed as guardian in Grays Harbor Superior Court Case No. 06-4-00159-5. Mr. Czerniski was not appointed as guardian because the alleged incapacitated person died during the pendency of the guardianship.

2.3 On August 18, 2006, Mr. Czerniski self-petitioned to be appointed as guardian in Grays Harbor Superior Court Case No. 06-4-00158-7. Mr. Czerniski was appointed as guardian.

2.4 On February 27, 2007, Mr. Czerniski self-petitioned to be appointed as guardian in Grays Harbor Superior Court Case No. 07-4-00058-9. Mr. Czerniski was appointed as guardian.

2.5 On July 3, 2008, Mr. Czerniski self-petitioned to be appointed as guardian in Grays Harbor Superior Court Case No. 08-4-00121-4. The court has not yet made an appointment of a guardian.

2.6 On July 10, 2008, Mr. Czerniski self-petitioned to be appointed as guardian in Grays Harbor Superior Court Case No. 08-4-00125-7. Mr. Czerniski was appointed as guardian.

2.7 Mr. Czerniski did not follow the guidelines of the Ethics Advisory Opinion 2005-001 in self-petitioning for guardianship so as to ensure that there was no appearance of conflict of

interest. Mr. Czerniski stated that he believes he was the only guardian taking Medicaid cases in Grays Harbor in late 2006 to 2007. AOC records indicate that there were 3 agencies and 15 CPGs accepting Grays Harbor cases in 2006, but it is unknown how many of those agencies accepted Medicaid cases.

2.8 Mr. Czerniski regularly petitioned to have the same Guardian ad Litem appointed in guardianship cases in which he was involved and the court appointed Mr. Czerniski's nominee. The court is required to choose a guardian ad litem from the registry in a system of consistent rotation unless there are extraordinary circumstances. Mr. Czerniski's naming of the same guardian ad litem creates the appearance of a conflict of interest. The Grays Harbor Guardian ad Litem Rotation Schedule lists nine guardians ad litem.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.2 to 2.8, Mr. Czerniski's conduct constitutes grounds for discipline pursuant to 403.1, which provides in pertinent part:

> Failure to avoid self-dealing, conflict of interest, and the appearance of conflict of interest. Failure to disclose any potential conflict to the court immediately.

3.2 Based on the facts and violations set forth above, Mr. Czerniski's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

> **GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board**
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> . . .
>
> (2) Duties and Powers.
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> . . .
>
> (viii) Grievances and Discipline. The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

DR 503 A professional guardian may be subject to disciplinary action for any of the following:

503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

4. AGGRAVATING AND MITIGATING FACTORS

Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating factors in determining the sanctions to be imposed.

4.1 Aggravating Factors. Pattern of conduct

4.2 Mitigating Factors. Absence of dishonesty or selfish motive, remoteness of prior offenses, and absence of a prior disciplinary record

5. PRIOR RECORD OF DISCIPLINE

Mr. Czerniski has no prior records of discipline with the Board.

6. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on Mr. Czerniski for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

6.1 Letter of Admonishment. Mr. Czerniski shall receive a letter of admonishment from the Board, as provided in 515.2.4. A letter of admonishment is generally appropriate when a guardian engages in professional misconduct incompatible with the standards of practice that does not cause significant injury to a party, the public, the legal system, and/or causes interference with a legal proceeding.

6.2 Mr. Czerniski agrees to follow the procedure set forth in the Ethics Advisory Opinion 2005-001 to ensure that there is no appearance of conflict of interest whenever he petitions for appointment as guardian by:

a. Identifying any alternate nominees and providing information as to why alternate nominees are not suitable or able to serve;

b. Attaching a written request from the party requesting a guardianship and which identifies the basis for the request and the basis for the decision by that party not to petition;

c. Attaching 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 alleged incapacitated person; (Such documentation must comply with GR 22.)

d. Providing an assessment by the certified professional guardian as to the availability of less restrictive alternatives and why those less restrictive alternatives do not adequately provide for the needs of the alleged incapacitated person; and

e. Providing the following information regarding any in-person meetings with the alleged incapacitated person: the results of that meeting and an opinion of the capacity issues faced by the alleged incapacitated person.

f. Disclosing and describing in detail any relationship the guardianship agency may have with a care facility, including the length of the relationship, the approximate number of guardianship clients at the care facility and any other information to assure transparency in the proceedings in all matters wherein Mr. Czerniski petitions the Court to be appointed as guardian

6.3 Mr. Czerniski agrees to provide the Board with the names of all new cases filed by Mr. Czerniski for a six month period from the date this Agreement is adopted and to cooperate with

the Board's monitoring of compliance with this Agreement. This cooperation may include, but is not limited to, mailing copies of petitions to the Board or an on-site visit by the Board.

6.4 Mr. Czerniski agrees to refrain from nominating a guardian ad litem in the petition, relying instead of the court's rotational appointment of guardians ad litem off of the registry. If there are extraordinary circumstances requiring Mr. Czerniski to nominate a particular guardian ad litem, those circumstances shall be set forth in the petition for guardianship.

6.5 Mr. Czerniski shall pay the Board's cost for this investigation pursuant to Disciplinary Regulation 516. Costs are $9.03 (for transportation and photocopying) and shall be paid within 30 days of the date this Agreement is approved by the Board.

7. VIOLATION OF AGREEMENT

7.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, self-petitioning for appointment as guardian without following the steps outlined above and nominating a specific guardian ad litem rather than rely on the rotational system.

7.2 In the event of an alleged breach of this Agreement, the Board will issue a Complaint pursuant to its Disciplinary Regulations, providing notice and an opportunity for a hearing to the certified professional guardian agency and to the certified professional guardian(s) alleged to be in breach of the ARD. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

7.3 This Agreement is binding as a statement of all known facts relating to the conduct of Mr. Czerniski but any additional existing acts may be proven in any subsequent disciplinary proceedings.

8. NOTICE

This Agreement shall be retained by the AOC in Mr. Czerniski's disciplinary file.

This Agreement shall be open to public access and disclosure, will be posted on the Administrative Office of the Courts (AOC) website for the Certified Professional Guardian Program (http://www.courts.wa.gov/programs_orgs/guardian/).

Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

9. ENTIRE AGREEMENT

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

10. SEVERABILITY

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

11. 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 is subject to public disclosure or release.

12. RIGHT TO COUNSEL

Mr. Czerniski acknowledges that he has the right to individual counsel for representation in this disciplinary matter, at his expense, as set forth in Disciplinary Regulation 509.1.

13. PRESENTATION OF AGREEMENT TO THE BOARD

Mr. Czerniski understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Mr. Czerniski waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:

Peter Czerniki, CPG No. 9947 Individually	9/29/08 Date
Attorney for WSBA #_____	Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

3 DAY OF November, 2008.

Marywave Van Deren

Hon. Marywave Van Deren
Chair, Certified Professional Guardian Board