CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF: **Stacy Phillips,** **CPG No. 9992**	**CPGB NO. 2007-026** **FINDINGS OF BOARD**

The Certified Professional Guardian Board (Board) finds that the guardian's obligations pursuant to the Agreement Regarding Discipline adopted on August 25, 2008 have been satisfied and that the disciplinary matter, CPGB No. 2007-026, be closed.

DATED this 9th day of March, 2009.

Certified Professional Guardian Board

By: _____
Sharon Eckholm, AOC Liaison to the Board

Certified Professional Guardian Board
Administrative Office of the Courts
1206 Quince Street SE
P.O. Box 41170
Olympia, WA 98504-1170
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FILED BY CPG BOARD

AUG 27 2008

CERTIFIED PROFESSIONAL GUARDIAN BOARD

STACY L. PHILLIPS, CPG #9992	)	PGB No. 2007-026 AGREEMENT REGARDING DISCIPLINE AND STIPULATED FINDINGS *Disciplinary Regulation 514*

The parties, Stacy L. Phillips (Ms. Phillips), CPG No. 9992, 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. Ms. Phillips has committed violations of the Standards of Practice (SOP) 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 Ms. Phillips 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.

1. STATEMENT OF FACTS

1.1. On or about December 7, 2007, the Board opened a grievance, PGB 2007-026, based on receipt of a grievance regarding King County Superior Court case #94-4-02668-0 KNT, *In the Guardianship of* MG . The grievance alleged that the guardian, Ms. Phillips, failed to file documents, failed to hold a hearing at 90 days, failed to account for income, failed to pay bills of the incapacitated person, purchased personal items using the incapacitated person's funds, and engaged in inappropriate behavior with the relative of the incapacitated person.

1.2 On April 6, 2007, Ms. Phillips was appointed as the successor guardian of the person and estate of MG ' previous guardian, Evelien Giakovmis, his grandmother, was removed upon the petition of the Department of Social and Health Services Adult Protective Services.

1.3 In May 2007, Ms. Phillips received the social security check for MG. Ms. Phillips deposited the money into a guardianship account. Ms. Phillips withdrew $600.00 in cash to pay to Evelien Giakovmis to reimburse Ms. Giakovmis for MG's expenses. Ms. Phillips ultimately did not give the cash to Ms. Giakovmis because of Ms. Phillips' concerns about Ms. Giakovmis' ability to safeguard the funds. The $600.00 was later returned to the guardianship account. MW

1.4 MG continued to reside with Evelien Giakovmis until her death in August 2007. On August 23, 2007, Ms. Phillips filed a Personal Care Plan and Inventory, approximately one and half months late. On September 6, 2007, Ms. Phillips filed a Designation of Standby Guardian.

1.5 On October 5, 2007, Ms. Phillips filed a Notice of Guardian's Intent to Resign and Petition to Appoint Successor Guardian. Sandra Wilton, the attorney for Evelien Giakovmis'

Estate, was present in court. Ms. Phillips was not represented at the hearing. Ms. Phillips amended her petition and resigned effective immediately as the guardian for MG The court appointed a Guardian ad Litem and set a hearing for October 25, 2007 to determine who would become the successor guardian.

1.6 The Guardian ad Litem filed a report recommending the appointment of successor guardians. On October 25, 2007, successor guardians were appointed and pursuant to the appointment order, Ms. Phillips was required to turn over the property of MG The issue of whether her immediate resignation placed MG at risk was reserved.

1.7 On November 13, 2007, an objection was filed regarding Ms. Phillips' final accounting. On November 28, 2007, the court entered an order approving fees for Ms. Phillips of $175.00 per month. The court found that she was not required to "pay back" any expenditure. One of the expenditures was for $225.00. Ms. Phillips had hired her adult son, Gavin Phillips, and his crew to pack up and move items out of MG's residence into a storage container. In a declaration regarding her expenditures, Ms. Phillips stated that she had contacted a commercial service and was quoted a rate of $32.00 per hour. She paid her son $25.00 per hour. Ms. Phillips also stated that in the past, she had used her son's services for some of her other guardianship clients.

1.8 On December 7, 2007, Ms. Phillips filed a Final Report and Revised Accounting. On April 9, 2008, the court entered an order approving Ms. Phillips' final report. The court found that "The activities undertaken by the Guardian for the benefit of the Incapacitated Person from the date of appointment on April 6th, 2007 [sic], through the date of the Guardian's Final Report and this order, have been reasonable and should be approved."

1.9 On March 29, 2006, Ms. Phillips was appointed as the guardian of the person and estate for B. , King County Superior Court case #06-4-01884-0 SEA. Ms. Phillips filed her personal care plan and inventory and obtained an order approving the budget and authorizing disbursements on September 18, 2006, approximately two and a half months late. On October 11, 2007, Ms. Phillips filed a notice that B had moved on March 1, 2007.

1.10 On February 13, 2007, Ms. Phillips was appointed as the guardian of the person and estate for C , King County Superior Court case #06-4-06357-8 SEA. Ms. Phillips filed her personal care plan and inventory and obtained an order approving the budget and authorizing disbursements on July 2, 2007, approximately one and half months late.

1.11 On January 31, 2006, Ms. Phillips was appointed as the successor guardian of the person for G , King County Superior Court case #79-4-50103-1 SEA. The annual report was due on April 30, 2007. Ms. Phillips petitioned for approval of the report on October 16, 2007. The annual report was approved on December 17, 2007, approximately seven and a half months late.

1.12 On January 3, 2007, Ms. Phillips was appointed as the successor guardian of the person for JH , King County Superior Court case #86-4-01239-4 SEA. Ms. Phillips filed the personal care plan on May 3, 2007, approximately one month late.

1.13 On March 27, 2007, Ms. Phillips was appointed as the guardian of the person and estate of AH , King County Superior Court case #07-4-00559-2 SEA. Ms. Phillips filed her personal care plan and inventory on July 2, 2007. She obtained an order approving the budget and authorizing disbursements on November 6, 2007, approximately four months late. The annual report was due on June 25, 2007. Ms. Phillips petitioned for approval of the report

on October 16, 2007. The annual report was approved on November 6, 2007, approximately four and a half months late.

1.14 On June 14, 2006, Ms. Phillips was appointed as the guardian of the person and estate of N , King County Superior Court case #06-4-03032-7 SEA. Ms. Phillips filed her personal care plan and inventory on November 29, 2006, approximately two and a half months late. She obtained an order approving the budget and authorizing disbursements on May 3, 2007, approximately seven and a half months late.

1.15 On September 26, 2007, Ms. Phillips was appointed as the successor guardian of the person and estate for P , King County Superior Court case # G5923 SEA. Ms. Phillips filed her personal care plan and inventory and obtained an order approving the budget and authorizing disbursements on January 28, 2008, approximately one month late.

1.16 On March 22, 2007, Ms. Phillips was appointed as the guardian of the person and estate for S , Snohomish County Superior Court case # 93-4-00791-0. Ms. Phillips filed her personal care plan and inventory on October 10, 2007, approximately three and a half months late. She obtained an order approving the budget and authorizing disbursements on October 25, 2007, approximately four months late.

1.17 On June 23, 2005, Ms. Phillips submitted the notarized form documenting that she had completed the required number of Continuing Education Credits (CEU). Guardians are required to report this information by January 31, but may report as late as April 30.

1.18 On July 23, 2007 Ms. Phillips paid the annual certification fee that a guardian is required to pay by September 1 each year. Ms. Phillips did not submit her Annual Disclosure, which was also due by September 1 until November 15, 2007.

1.19 On March 3, 2008, Ms. Phillips submitted proof of Errors & Omission coverage which was due by January 31, 2008.

1.20 At all times relevant herein, Ms. Phillips was a certified professional guardian (CPG) pursuant to General Rule of Court (GR) 23, CPG #9992.

2. VIOLATIONS OF THE STANDARDS OF PRACTICE

2.1 Based on the facts set forth in paragraphs 1.1 through 1.8 and 1.20, Ms. Phillips' conduct constitutes violation of RCW 11.92.040, RCW 11.92.043, SOP 401.1, SOP 401.2, SOP 401.3, SOP 403.1 which provide in pertinent part:

> **RCW 11.92.040** It shall be the duty of the guardian or limited guardian of an estate: (1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;
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> (2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration. . . .
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> (6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person.
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> **RCW 11.92.043** It 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 which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.
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> **SOP 401.1** Failure to be familiar with RCW 11.88, RCW 11.92, GR 23, the Standards of Practice and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an IP. Failure to seek timely direction from the court. Failure to disclose to the court any conflict between a court order in a specific case and regulations.
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> **SOP 401.2** Failure to seek legal advice as necessary to know how the law applies to specific decisions.

SOP 401.3 Failure to provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

SOP 403.1 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.

2.2 Based on the facts set forth in paragraphs 1.9 through 1.16 and 1.20, Ms. Phillips' conduct constitutes violation of RCW 11.92.040, RCW 11.92.043, SOP 401.1 and SOP 401.3 which provide in pertinent part:

RCW 11.92.040 It shall be the duty of the guardian or limited guardian of an estate: (1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration. . . .

(6) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person.

RCW 11.92.043 It 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 which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person....

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

SOP 401.1 Failure to be familiar with RCW 11.88, RCW 11.92, GR 23, the Standards of Practice and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an IP. Failure to seek timely direction from the court. Failure to disclose to the court any conflict between a court order in a specific case and regulations.

SOP 401.3 Failure to provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

2.3 Based on the facts set forth in paragraph 1.17 and 1.20, Ms. Phillips' conduct constitutes violation of Continuing Education Regulation (CER) 208 which provides in pertinent part:

208 Submission of Information--Reporting of Attendance

208.1 Compliance Report. Each active Guardian shall, on or before January 31 of each year, commencing January 31, 2003, submit an affidavit to the Committee, at the AOC, setting forth all information required by Form No. 2, concerning such active Guardian's completion of approved continuing education during the preceding calendar year. Such affidavit shall also contain a report of "carryover" credits, if any, as delineated in Regulation 202.

208.2 Supplemental Report. If an active Guardian has not completed the minimum education requirement for the preceding calendar year, or complied with Regulation 208.1, compliance may still be accomplished by:

208.2.1 Submitting by April 30, the affidavit called for by Regulation 208.1 (Form 2) setting forth therein the extent of the active Guardian's compliance with the minimum education requirement.

208.2.2 Paying at the time of filing such supplemental affidavit a special $50 service fee.

2.4 Based on the facts set forth in paragraph 1.18 and 1.20, Ms. Phillips' conduct constitutes violation of Application Regulation (AR) 111.8.1 which provides in pertinent part:

AR 111.8.1 Failure to pay the required annual certification fee and late fee and submit the required declaration by September 1 shall subject the CPG or Agency to revocation of certification by the Board.

2.5 Based on the facts set forth in paragraph 1.19 and 1.20, Ms. Phillips' conduct constitutes violation of AR 117.5.1 and AR 117.7.1 which provide in pertinent part:

117.5.1 By January 31 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.

AR117.7.1 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.

2.6 Based on the facts and violations set forth above, Ms. Phillips' 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

. . .

(2) Duties and Powers.

. . .

(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:

DR 503.1 Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

DR 503.3 Failure to perform any duty one is obligated to perform as a professional guardian.

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

3. 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.

3.1 **Aggravating Factors.** Multiple offenses; a pattern of conduct.

3.2 Mitigating Factors. Absence of prior disciplinary record, absence of dishonesty or selfish motive, absence of adverse impact and cooperation with disciplinary proceedings.

4. PRIOR RECORD OF DISCIPLINE

Ms. Phillips has no prior record of discipline with the Board.

5. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions and remedies on Ms. Phillips for the conduct and violations 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.

5.1 Letter of Admonishment. Under DR 514.2.4 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.

5.2 Probation. Ms. Phillips shall be under probation for a period of not less than six months to ensure her compliance with the duties, standards and requirements for a professional guardian. (DR 515.3). If Ms. Phillips complies with the duties, standards and requirements of a professional guardian for six months, the probation will be lifted. If not, the probation period may be continued for another period not to exceed six months or the Board may take further disciplinary action.

5.3 Case Tracking System. Ms. Phillips shall create and implement a unified tracking system for all guardianships which will prevent any future missed or late filings of reports as well as providing better case management.

5.4 Seek Legal Counsel. Ms. Phillips shall consult with legal counsel as needed. The Board recommends that Ms. Phillips consult with an attorney regularly, both to review her cases and to

assist her with the preparation of annual reports. Ms. Phillips is encouraged to seek representation when appearing in contested matters.

5.5 Monitoring.

5.5.1 Ms. Phillips shall be subject to monitoring of cases in which she is the court-appointed guardian to determine whether she is meeting her duties to her clients pursuant to statute, court order, rules, regulations, and the Standards of Practice. The Guardian Investigator, Deborah Jameson, shall be the monitor. Monitoring shall commence upon approval of this Agreement and shall be completed no later than six months following commencement. During the period of monitoring, the monitor shall review 5 cases, to be selected at random by the monitor, in which Ms. Phillips is the guardian. The monitor shall review the following items in the selected cases:

A) The filing dates of all reports and inventories filed by the guardian with the court, or required to be filed by the guardian, to determine whether the documents have been filed within the time period required by statute and/or court order.

B) The billing record for the previous 30-day period for each file selected.

C) The case management system used to track the selected cases.

5.5.2 At the conclusion of the review and monitoring period, the monitor shall file a written report with the Board that reflects the monitor's findings and conclusions relating to the files reviewed and the guardian's compliance with the items set forth above.

5.5.3 Reimbursement of the fees and costs of the monitoring shall be paid by Ms. Phillips within thirty days following presentation by the monitor of a schedule of the fees and costs. Ms. Phillips will not be required to reimburse of the fees and costs of monitoring that exceed $2,000.00 for the six month monitoring period. The hourly rate for calculating the

monitor's fees will be determined by adding the Guardian Investigator's hourly salary and 24.4% of the hourly salary (to reflect the cost of benefits).

5.5.4 After the Standards of Practice Committee (SOPC) has reviewed the monitor's findings and conclusions, it shall report to the Board on Ms. Phillips' compliance with this Agreement and any applicable statutes, rules and regulations. The SOPC may recommend that Ms. Phillips be released from the monitoring requirement or it may recommend that another six month period of monitoring be required. If the Board determines that another six month period of monitoring is warranted, the Board shall direct the monitor appointed by the Chair to review another randomly selected five cases according to the parameters set forth above. Ms. Phillips shall be required to reimburse the fees and costs for a second six month period of monitoring, not to exceed $1,500.00.

5.5.5 Following review of the monitor's second report, the Board may either release Ms. Phillips from the monitoring requirement, or direct that a Complaint be issued for lack of compliance with this Agreement and any applicable statues, rules and regulations.

5.5.6 The report(s) of the monitor shall be a public record, shall be open to public access and disclosure.

5.6 Appointment of Family Members. Ms. Phillips shall seek court approval in writing and with full oral disclosure at a court hearing prior to the hiring of Ms. Phillips' family members to work for pay on any case in which Ms. Phillips is the court-appointed guardian.

5.7 Costs. Ms. Phillips shall pay the Board's cost for this investigation (for transportation and photocopying) in the amount of $10.81, within 30 days of the date this Agreement is approved by the Board.

6. VIOLATION OF AGREEMENT

6.1 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, failure to implement a case tracking system, failure to be represented by an attorney at hearings in which Ms. Phillips is a party, failure to pay costs, and failure to cooperate with the monitor.

6.2 In the event of an alleged breach of this Agreement, the Board shall provide notice to Ms. Phillips of the substance of the breach, and Ms. Phillips shall have 30 days to respond to the allegations of the breach.

6.3 If the Board finds that the Agreement has been breached, the Board may pursue disciplinary action, including Suspension Pending Disciplinary Proceedings pursuant to Disciplinary Regulation 519, against the professional guardian agency for violation of the Agreement.

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

7. NOTICE

7.1 This Agreement shall be retained by the AOC in Ms. Phillips's disciplinary file.

7.2 This Agreement is a public record, shall be open to public access and disclosure, and will be posted as a disciplinary proceeding on the Board's website.

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

8. 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.

9. 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.

10. 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.

11. RIGHT TO COUNSEL

Ms. Phillips acknowledges that she has the right to individual counsel for representation in this disciplinary matter, at her expense, as set forth in Disciplinary Regulation 509.1.

12. PRESENTATION OF AGREEMENT TO THE BOARD

Ms. Phillips understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Ms. Phillips 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:

Stacy L. Phillips, 6/30/2008
Date

1
2 _____ _____
Date
3 Attorney for Stacy Phillips
4 WSBA #_____
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6 **APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS**
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8 25 **DAY OF** August **, 2008.**
9
10 Marywave Van Deren
Hon. Marywave Van Deren
11 Chair, Certified Professional Guardian Board
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