

Certified Professional Guardian Board

Meeting Minutes

June 19-20, 2009

Cedarbrook Conference Ctr., SeaTac, WA

Friday, June 19, 2009

CHAIR

Judge Kimberley Prochnau

MEMBERS PRESENT

Gary Beagle

Dr. Ruth Craven

Nancy Dapper

John Jardine

Chris Neil

Winsor Schmidt

Comm. Joseph Valente

Judge Chris Wickham

Sharon York

MEMBERS ABSENT

Robin Balsam

Ree Ah Bloedow

Judge M. Karlynn Haberly

Lori Petersen

VISITORS

Shirley Bondon, Manager, Office of Public Guardianship (OPG)

Mimi Hudson, CPG, Washington Association of Professional Guardians (WAPG)

Glenda Voller, CPG, Montlake Guardianship & Trustee Svcs, LLC & WAPG

STAFF

Myra Downing

Sharon Eckholm

Deborah Jameson

Dirk Marler

Chris Ruhl

CALL TO ORDER

Judge Prochnau called the meeting to order and welcomed the Board members, staff and attending guests.

CPG Practice Experience

Judge Prochnau invited the Washington Association of Professional Guardians (WAPG) to present a CPG practice experience. Mimi Hudson, CPG, shared her experience with the variety of daily tasks required of a guardian, the types of unforeseen circumstances she encounters, and the overarching duty of the guardian to advocate for their clients. Judge Prochnau thanked Ms. Hudson for sharing her breadth of experience as a guardian and her heartfelt dedication to the individuals she serves, and then invited the Board members and staff to also share what is most meaningful in the work they do. The common thread connecting all the comments was the desire to protect and improve the circumstances of those who have lost the capacity to care and advocate for themselves.

Adjourn

Judge Prochnau adjourned the meeting at approximately 7:30 p.m.

Saturday, June 20, 2009

CHAIR

Judge Kimberley Prochnau

MEMBERS PRESENT

Gary Beagle
Dr. Ruth Craven
Nancy Dapper
John Jardine
Winsor Schmidt
Comm. Joseph Valente
Judge Chris Wickham
Sharon York

MEMBERS ABSENT

Robin Balsam
Ree Ah Bloedow
Judge M. Karlynn Haberly
Chris Neil
Lori Petersen

VISITORS

Shirley Bondon, Manager, Office of Public Guardianship (OPG)
Michael L. Johnson, CPG, Washington Association of Professional Guardians (WAPG)
Scott Malavotte, CPG, Malavotte & Associates Services, CPGA & WAPG
Steven Posalski, CPG
Glenda Voller, CPG, Montlake Guardianship & Trustee Svcs, LLC

STAFF

Lynne Alfasso
Myra Downing

Sharon Eckholm
Deborah Jameson
Chris Ruhl

CALL TO ORDER

Judge Prochnau called the meeting to order and asked the attending guests to introduce themselves.

BOARD BUSINESS

1. Approval of Minutes

A motion was made and seconded to approve the minutes as presented for the Board meeting held on May 10, 2009. The motion passed.¹

2. Discussion Guidelines

Myra Downing, meeting facilitator, agreed to lead the Board in a focused discussion of the certification experience requirement. Board members agreed to discussion guidelines geared toward reaching consensus, recognizing that the Board's established procedure using Robert's Rules of Order would be used for resolution of the issues. During the discussions visitors will also be invited to provide comments.

CERTIFICATION EXPERIENCE REQUIREMENT

Sharon York, Chair of the Ad Hoc Committee on Certification Experience Requirement, reported on the committee's last meeting. The issues for discussion identified by the committee were combined with those formulated by the Retreat Planning Committee:

1. In light of the UW Guardianship Certificate Program, should the need for the experience requirement be re-evaluated for advanced degrees?
2. Does volunteer time count as pertinent experience? If so, what types of volunteer activities would count, i.e., a person with power of attorney for a relative.
3. Does financial experience count as pertinent experience if the experience was not in a guardianship related setting?
4. Should a competency/skill-based approach be used to measure an applicant's qualifications for certification?

In discussing the questions above, the Board reviewed the education and experience requirements set forth in General Rule (GR) 23(d)(1)(iv) & (v), which provide that an applicant shall:

(iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship services, or a baccalaureate degree from an accredited institution and at least

¹ Except in the event of a tie vote, the Chair does not vote on any motions before the Board.

two full years' experience working in a discipline pertinent to the provision of guardianship services;

(v) The experience required by this rule must include decision-making or the use of independent judgment on behalf of others in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

1. In light of the UW Guardianship Certificate Program, should the need for the experience requirement be re-evaluated for advanced degrees?

It was recognized that though the UW program has attracted a group of applicants with higher levels of education and breadth of experience, comprehensive education in the fundamentals of practicing as a professional guardian does not substitute for hands-on experience demonstrating fiduciary skills. This experience does not necessarily require having served in a fiduciary capacity, but should demonstrate that the applicant has experience exercising judgment in the areas related to estate and personal care management. Because the courts rely on the Board's certification in appointing professional guardians, the qualifications for certification must be the minimum to ensure an individual is prepared to take on the responsibilities of acting on behalf an incapacitated person.

The main difficulty with the recent amendment to the GR 23 experience requirement is that it can potentially be interpreted as requiring experience as a guardian. The new language in GR 23(d)(1)(v) requiring experience making decisions or using independent judgment "on behalf of others" was not meant to be so limiting. Rather than considering eliminating the experience requirement, the experience requirement should more accurately express the fiduciary skills required.

A motion was made and seconded to recommend to the Supreme Court that the phrase "on behalf of others" be deleted from GR 23(d)(1)(v). The motion passed. Pending the Court's consideration of proposed GR 23 amendments, it was suggested that the Board's interpretation of the current language be adopted in regulation in order to inform decisions on applications and appeals. (*See minutes below under "Certification Experience Requirement" for final proposed regulations approved for comment.*)

In regards to the requirement for graduate level work, the Board discussed whether a waiver process should be established which would allow applicants to demonstrate how their education would substitute for the experience requirement. It was the consensus of the Board that the experience requirement be retained but that the requirement be reduced for graduate level degrees. A motion was made and seconded to recommend to the Supreme Court that the following underlined language be added to GR 23(d)(1)(iv):

(iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship services, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship services, or a Masters,

J.D., Ph.D., or equivalent advanced degree from an accredited institution and at least one year experience working in a discipline pertinent to the provision of guardianship services;

The motion passed. Sharon York abstained.

2. Does volunteer time count as pertinent experience? If so, what types of volunteer activities would count, i.e., a person has power of attorney for a relative.

Several comments were made regarding the difficulty in substantiating and evaluating volunteer experience. The Office of Public Guardianship reviews volunteer experience that is supervised and verifiable based on contact hours. It was noted that California and Arizona allow an applicant to demonstrate supervised volunteer experience, but specifically exclude experience in a fiduciary capacity for a family member. Consensus of the group was that volunteer experience should be supervised and verifiable, and though the Board does not consider fiduciary services on behalf of a family member to be lesser work, the difficulty in verifying and evaluating the experience is too difficult to measure. A motion was made and seconded to propose a new regulation:

“Experience working in a discipline pertinent to the provision of guardianship services” in GR 23(d)(1)(iv) includes volunteer work experience that is supervised, verifiable and based on actual hours worked, except as otherwise set forth in these regulations.

The motion passed. A motion was made and seconded to propose a new regulation:

"Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) does not include providing services for a family member.

The motion passed. Proposed regulations are posted for comment for at least 30 days prior to consideration for adoption.

3. Does financial experience count as pertinent experience if the experience was not in a guardianship related setting?

It was agreed that this question is relevant to all of the disciplines pertinent to the provision of guardianship services specified in GR 23(d)(1)(iv)&(v), which also includes specific mention of the areas of legal, social work and healthcare. Several comments echoed the earlier discussion of the first issue: that the purpose of the experience requirement is to ensure the applicant has the necessary skills to assume the fiduciary responsibility of a professional guardian. Experience in which the applicant has developed skills transferable to the provision of guardianship services would establish such competency. A motion was made and seconded to propose a regulation interpreting “experience working in a discipline pertinent to the provision of guardianship services” contained in GR 23(d)(1)(iv):

"Experience working in a discipline pertinent to the provision of

guardianship services" in GR 23(d)(1)(iv) includes experience in which the applicant has developed skills that are transferable to the provision of guardianship services.

The motion passed. A motion was made and seconded to propose a regulation interpreting the language in GR 23(d)(1)(v) requiring experience making decisions or using independent judgment "on behalf of others" so that "others" is not limited to incapacitated persons. The motion passed. Staff was asked to provide written drafts of the approved proposed regulations for consideration after the noon break.

EXECUTIVE SESSION

The Board adjourned to Executive Session at approximately 1:00 p.m. to consider an appeal of the denial of certification application.

OPEN SESSION

The Board reconvened in Open Session at approximately 1:20 p.m.

Regarding the Appeal from Denial of Certification of Emmy P. Purainer, a motion was made and seconded to conditionally approve Ms. Purainer's application for certification as a professional guardian dependent upon proof of her successful completion of the UWEO Guardianship Certificate Program and absent any disqualifying events pending certification, and to adopt the Findings of Fact, Conclusions of Law and Recommendation of the Appeals Panel with the following modifications:

Finding of Fact 1.2: Delete

Finding of Fact 1.3: Modify by adding the following underlined language:

In materials submitted in support of her appeal, Ms. Purainer describes her work for the last two years with the City of Seattle tracking and monitoring all Seattle Public Utilities consultant contracts. She expanded on her experience with problem solving and exercising independent judgment in the financial area.

Finding of Fact 1.4: Modify by adding the following underlined language:

Ms. Purainer's application establishes all other requirements for conditional approval for certification as a professional guardian.

Conclusion of Law 2.4: Modify by adding the following underlined language:

Ms. Purainer meets the requirements for conditional approval for certification as a professional guardian in the state of Washington.

The motion passed. The Appeals Panel (Comm. Valente, Nancy Dapper & Winsor Schmidt) recused from voting. An order on appeal reflecting the Board's determination will be sent to the applicant.

CERTIFICATION EXPERIENCE REQUIREMENT

The Board reviewed the draft proposed regulations approved earlier in the meeting and approved them for posting for comment with a few modifications. The following proposed new regulations will be posted for comment and considered for adoption at the August 4, 2009, Board meeting:

"Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) includes volunteer work experience that is supervised, verifiable and based on actual hours worked, except as otherwise set forth in these regulations.

"Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) does not include providing services for a family member.

"Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) includes experience in which the applicant has developed skills that are transferable to the provision of guardianship services.

"Decision-making or the use of independent judgment on behalf of others" in GR 23(d)(1)(v) is not limited to incapacitated persons.

"On behalf of others" in GR 23(d)(1)(v) means for the benefit of others.

In light of the new proposed regulations, a motion was made and seconded to post for comment proposed repeal of existing Regulation 002.9, defining "experience working in a discipline pertinent to the provision of guardianship services." The motion passed.

4. Should a competency/skill-based approach be used to measure an applicant's qualifications for certification?

Ad hoc committee members Shirley Bondon and David Lord provided the draft Guardian Competencies chart for consideration as an example of a competency-based approach for measuring an applicant's qualifications. Core competencies have also been developed by the Center for Guardianship Certification (CGC) as a basis for CGC certification and by CGC contract with individual states which have implemented a testing requirement. The ad hoc committee initially expressed interest in the competency-based approach, but in light of the progress made in further defining the experience requirement in regulation, it was the consensus of the Board that consideration of this approach be deferred.

STANDARDS OF PRACTICE COMMITTEE

Disciplinary Regulation (DR) 520 – Process & Implementation

At the May meeting the Board deferred the decision on the process for selection of the guardian's cases to be audited until further information on the total number of certified professional guardian guardianship cases could be obtained. The Board directed Ms. Jameson to send a request to all certified professional guardians to submit their guardianship case lists. The Board expressed its gratitude for the prompt response from certified professional guardians. Based on 228 certified professional guardians who reported (90% of CPGs), the total number of certified professional guardian cases is approximately 3324.

Ms. Jameson summarized the SOPC's proposal of three options for selection of guardian cases, which were provided in the Board meeting materials:

- Option A: Once the Guardian Investigator receives the corrected list of the selected guardian's/agency's cases, the Guardian Investigator will review all (100%) of the guardian's cases.
- Option B: Once the Guardian Investigator receives the corrected list of the selected guardian's cases, the Guardian Investigator will review a random sample of 40% or five cases, whichever is greater, of the guardian's cases. If such sampling results in no cases for review, the Guardian Investigator will re-sample.
- Option C: Once the Guardian Investigator receives the corrected list of the selected guardian's cases, the Guardian Investigator will review all of the guardian's cases in which reports or pleadings were due within the prior six months.

Board members and attending visitors were asked to comment. Comments revisited points made at earlier meetings: Comments opposed to audit of 100% of a guardian's cases questioned whether it is necessary to audit all of a guardian's cases to uncover practice problems in light of the burden on guardians to respond to an audit of all of their cases. In addition, it was stressed that randomly selecting 40% of the guardian's cases would result in a complete round of auditing all guardians within one year rather than two years. Comments in favor of audit of 100% of guardian's cases questioned how the Board could choose not to review compliance in all cases where resources was not an issue, and it was emphasized that review of all cases will ensure better oversight and provide a complete picture of the extent of filing deficiencies for future planning. A motion was made and seconded to adopt the proposed Implementation Process for DR 520 with Option B for selection of cases to be reviewed. The motion passed.

LONG-RANGE PLANNING

Recognizing the limited time left in the meeting, Ms. Downing asked Board members to identify one priority effort the Board should accomplish over the next year. The majority of the Board members identified improving and refining the UW Guardianship Certificate Program. Other comments included: end of year review of DR 520 audit results and consider whether other types of monitoring is needed; develop the core competencies

of a successful guardian; consider whether testing should be part of the certification process; ensure quality continuing education available in areas of need.

Judge Prochnau thanked the Board members, staff and attending visitors for a very productive meeting.

Adjourn

Judge Prochnau adjourned the meeting at approximately 3:00 p.m.

Respectfully submitted,

Judge Prochnau
Sharon Eckholm

Board Approved: July 22, 2009