

# **Certified Professional Guardian Board**

## **Meeting Minutes**

**September 13, 2010**

**SeaTac Office Center, 18000 International Blvd., SeaTac, WA**

### **CHAIR**

Judge Chris Wickham

### **MEMBERS PRESENT**

Robin Balsam

Ree Ah Bloedow

Nancy Dapper

John Jardine

Judge James Lawler

Chris Neil

Judge Kim Prochnau

Prof. Winsor Schmidt

Judge Robert Swisher

Comm. Joseph Valente

### **MEMBERS ABSENT**

Dr. Ruth Craven

Emily Rogers

Gary Beagle

### **VISITORS**

Shirley Bondon, Office of Public Guardianship (OPG)

Tom Goldsmith

Mindi Blanchard

Michael Johnson

J R Hardman

Glenda Voller

Lori Petersen

Brenda Morales

Kellie Derum

Kim Reid

Kathryn Evans

Sylvia Curry

Ken Curry

William Jaback

Mimi Hudson

### **STAFF**

Deborah Jameson

## **A. CALL TO ORDER**

Judge Wickham called the meeting to order and asked the Board members and attending guests to introduce themselves.

## **B. BOARD BUSINESS**

### **1. Approval of Minutes**

A motion was made and seconded to approve the minutes as presented for the Board meeting held on June 14, 2010 and August 9, 2010. The motion passed.<sup>1</sup>

### **2. Chair Report**

Judge Wickham reported on the following topics:

a. John Jardine's and Ruth Craven's term on the Board will be over at the end of September. Dr. Craven was not able to be present at the meeting. Judge Wickham thanked John Jardine for his dedicated service to the Board and presented him with a certificate and letter of appreciation from Chief Justice Madsen. Mr. Jardine also received a glass plaque with the dates of his service inscribed. Mr. Jardine said that he valued the Board's ability to reach consensus and that the experience of serving on the Board was professionally enriching.

b. Nominating committee, Judge Prochnau, Chris Neil, and Emily Rogers, met recently and recommended requesting Supreme Court to appoint William Jaback to replace John Jardine. A motion was made and seconded to send Mr. Jaback's name to the Supreme Court for appointment to the Board. The motion passed unanimously. The nominating committee will make a recommendation to the Board in October regarding a replacement for Dr. Craven's position.

c. Judge Wickham has asked Judge Lawler to serve as the vice-chair of the Board and Judge Lawler accepted. The Board agreed with the decision.

d. Sign up for next years' committees on forms passed out at the meeting. The committees are: Applications, Education, Ethics, Standards of Practice, Regulations, and Long Range Planning Committee.

e. 2011 meeting dates were provided to all Board members. The Board will meet in person on a quarterly basis and have telephone conferences in the other months. A long-term planning meeting is tentatively planned for April.

f. GR23 changes effective September 1, 2010. The changes requested by the Board after its 2009 long-term planning meeting have been adopted by the Supreme Court. The changes are to GR 23(d)(1)(iv) and (v). The changes are posted on the Web site.

g. Board member needed to serve as hearing officer on 2009-006. Under the disciplinary regulations, the Chair may appoint a board member to serve as the hearing officer. Board members were asked to contact Ms. Jameson if willing to serve.

---

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

h. Discussion of guardian fees—Judge Prochnau addressed Comm. Watness's recent decision on payment of attorney fees through a Medicaid recipient's participation. Judge Prochnau noted that the decision was not the official position of King County, but that it was being shared with the Board for informational purposes.

### **C. OFFICE OF PUBLIC GUARDIANSHIP – UPDATE**

Shirley Bondon, Manager of the Office of Public Guardianship (OPG), reported that she was a member of several groups that were preparing legislation affecting vulnerable adults. One group, the Informed Consent group, was formed through the UW Center on Human Development and Disability. This group is looking at the issue of how to provide a better system than guardianship for patients in the hospital who lack the capacity to provide medical consent. The group plans to recommend expanding the list of those who can provide informed consent to include grandparents, aunts and uncles, nieces and nephews, and grandchildren.

Ms. Bondon reported that the other group she is working with, the Abuse, Neglect, and Vulnerable Adult Workgroup has made specific recommendations: to replace and integrate databases; to make findings of abuse, neglect, etc. public; to increase the number of investigators; to create better connections with the police; to provide training for persons with diminished capacity regarding their rights and the reporting process; to provide training for APS, law enforcement, guardians, and judicial officers; to make resources available for abused adults; to provide limited case management services; and to create an ongoing coalition of stakeholders.

Ms. Bondon reported that the OPG has accepted approximately 20 new cases and submitted a request for additional funding to maintain the OPG's cases. Ms. Bondon said that an applicant from Clark County will be paid for attending the UWEO class because it is a county she has targeted for inclusion in the OPG program.

The Board briefly discussed the recent articles regarding problems in Adult Family Homes.

### **D. COMMITTEE REPORTS**

#### **1. Education Committee**

John Jardine presented a brief review of the regulation changes re teaching credits 203, 206, 207. There was discussion about the reason for the change to the number of hours given for teaching. The Board decided to wait and vote on these changes at the October meeting when Gary Beagle will be present and able to speak to the regulations.

#### **2. Standards of Practice Committee**

a. Comm. Valente reported that the DR 520 Audit showed that the majority of guardians were in compliance with filing requirements. Some guardians appeared to have no case management system and were required to develop a calendaring system and have the SOPC review it. Some professional guardians blamed late filings on their attorneys without acknowledging their responsibility for ensuring that the filings happened. A number of guardians encountered personal issues such as, health, divorce, etc. and neglected filings. They had no contingency plan. Comm. Valente noted that some counties seemed to have no monitoring system.

The DR 520 Audit was just about timeliness and did not address completeness or quality of the reports. The Board recommended the SOPC to discuss what, if any, next steps to take regarding monitoring and make a recommendation to the Board.

The Board discussed how to use the data regarding counties to help the counties. The Board decided that the Chair should send a letter to each county with the audit data for that county and a sense of how the county is doing in relationship to other counties and refer the counties to the Guardianship and Probate Committee of the SCJA for assistance with developing monitoring programs.

b. Comm. Valente reported on the resolution of CPGB No. 2009-009 and noted that the guardian had complied with all of the requirements of the Agreement Regarding Discipline and the SOPC was recommending ending the guardian's probation and closing the matter. A motion was made and seconded to adopt the recommendation of the SOPC and close the disciplinary matter and end the probation of the guardian. The motion passed.

### 3. Applications Committee

Robin Balsam reported that applications regulation 103.2.6 has been posted for comment and that several comments were received, but were about the issue of independent contractors, not employees. Motion made and seconded for approval of applications regulation 103.2.6, text as below. Motion passed.

103.2.6 Submit declaration under penalty of perjury, that the guardian will take steps to ensure the guardian's employees who come into contact with the person or estate of an incapacitated person have passed a criminal history check prior to having contact with the incapacitated person or incapacitated person's estate.<sup>2</sup>

The Board had concerns that the regulation stated that a guardian would take steps to ensure background checks, but that there was no Standard of Practice requiring background checks. The recommendation was made to have a Standard of Practice on this issue.

### 4. Regulations Committee

a. **E&O Insurance:** Chris Neil reported that if a guardian did not file his/her E & O insurance in a timely manner, that there was no mechanism other than decertification and that a late fee seemed appropriate. The Regulations Committee proposed charging a fee if E&O payments were received late, similar to that charged when annual dues or disclosures are late. The Committee also proposed changing the date that E&O reporting is done to July so that dues, disclosure and E&O reporting will all happen at the same time. A motion was made and seconded to post the regulation as follows for comments. The motion passed.

117 Insurance

117.5 Annual Report

---

<sup>2</sup> Within the proposed regulation amendment, additions are indicated by underlining and deletions indicated by strikethroughs.

117.5.1 By ~~January~~ August 31 each year, every guardian and every 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.

#### 117.7 Failure to Comply

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

117.7.2 Failure to submit the required declaration by August 1 will subject the guardian and/or agency to a special service fee of \$50.00 if paid before September 1.

117.7.3 Failure to submit the required declaration by September 1 will subject the guardian and/or agency to a special service fee of \$100.00 if paid before October 1.

117.7.4 Failure to pay the required annual certification fee and late fee and submit the required declaration by October 1 shall subject the CPG and/or Agency to revocation of certification by the Board.

117.7.~~5~~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 shall advise the CPG or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. 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 there has not been compliance with the regulation, then the 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.

~~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.~~

117.7.6 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency. (Amended 11-8-04)

117.7.7 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG 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 certified mail to the CPG or Agency. Any such order shall be final

~~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.~~

~~117.7.75~~ If the guardian or agency does not file a petition requesting an administrative hearing, than the Board may impose disciplinary sanctions on the guardian or agency as set forth in 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.<sup>3</sup>

**b. CPG Names:** Chris Neil next reported on a regulation that would address how a CPG may use his/her name for business. The regulation would encourage transparency and would require a CPG to do business in the name in which he/she was individually certified or in the name of the agency if the agency was a certified professional guardian agency. The Board discussed whether the regulation would prohibit a CPG from setting up a corporation or professional services corporation as an individual for tax purposes. The Board also discussed whether an individual guardian was able to shield him or herself from liability through creation of a corporation and what the implications were for bonding and E&O insurance. There was a motion made and seconded to post the regulation as follows for comment and to assign it a regulation number. The motion passed.

A CPG who is certified as an individual shall operate only in the name in which he or she was certified. A CPG shall not operate using an alias, firm name, title, or "doing business as" if that differs from the name certified by the Board.

If an individual CPG is appointed as guardian, letters of guardianship shall be issued to the CPG individually. If a CPG Agency is appointed as guardian, letters of guardianship shall be issued to the CPG Agency.

A CPG shall not make a false or misleading communication about the guardian or the guardian's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, omits a fact necessary to make the communication considered as a whole not materially misleading. A CPG shall not use a firm name, letterhead, or other professional designation that is misleading. For example, an individual shall not operate using a name different than his or her certification.

Each CPG must come into compliance with this regulation by January 1, 2012.

#### **E. EXECUTIVE SESSION**

The Board adjourned to executive session to consider applications, voluntary surrenders, requests to become inactive, and decertification.

#### **F. OPEN SESSION**

The Board reconvened in open session and took the following action:

#### **Action on Applications:**

---

<sup>3</sup> Within the proposed regulation amendment, additions are indicated by underlining and deletions indicated by strikethroughs.

Jean Bohling , CPG # 11149—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve<sup>4</sup>. Motion passed.

William McElroy, CPG #11248—Motion made and seconded to adopt the recommendation of the Applications Committee and deny the application. Motion passed.

Marlene Moseler, CPG #11288—Motion made and seconded to pend the decision until the educational background was verified. Motion passed.

Kristi Kilbourne, CPG #11284—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Patricia Kearns, CPG # 11277—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Mark Baclawski, CPG # 11039—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Dorine Bright, CPG # 11311—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Sarah Rice, CPG # 11317—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Kathleen Price, CPG # 11320—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Karen Grass, CPG # 11302—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Tania Lopez, CPG # 11299—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Tami Lauteren, CPG # 11312—Motion made and seconded to adopt the recommendation of the Applications Committee and deny the application. Motion failed. Motion made and seconded to approve the application. Motion passed.

---

<sup>4</sup> Conditional approval is granted pending successful completion of the mandatory training and absent any intervening disqualifying events.

Arlene Mackey, CPG # 11308—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Summer O'Neill, CPG # 11319—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Sebastian Portuesi, CPG # 11296—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Scott Hadley, CPG # 11324—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Charles Rohr, CPG # 11287—Motion made and seconded to adopt the recommendation of the Applications Committee and deny the application. Motion failed. Motion made and seconded to approve the application. Motion passed.

Wayne Funk, CPG # 11287—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve. Motion passed.

Motion made and seconded for approval of the application for certification as a professional guardian agency of Allies in Care Guardianship LLC, CPGA # 11326. Motion passed.

A motion made and seconded to approve the requests for voluntary surrender of the following certifications: Motion passed.

Steven Polkow, CPG # 9997  
Celinda Matthews, CPG # 10738

A motion made and seconded to approve the request for inactive status of George Marcoe, CPG # 5218. Motion passed.

Motion made and seconded to approve decertification of Jana Hudson, CPG #10414, for non-compliance with dues requirement in 2009. Motion passed.

#### **G. PROPOSED STANDARDS OF PRACTICE DISCUSSION**

Chris Neil began the discussion by suggesting a way for the Board to consider the revisions. He proposed that the Board vote to post the revised Standards of Practice for comment with an extended comment period. There was a motion made and seconded to publish the revised Standards of Practice for comment noting that the Board had not yet discussed the regulations and that the discussion would begin at the January meeting. The motion passed.

#### **H. PROGRESS TOWARDS 2011 GOALS**

The Board noted that progress has been made towards the 2011 goals, primarily with the revision of the Standards of Practice.

**Adjourn**

Judge Wickham adjourned the meeting at approximately 1:10 pm.

Respectfully submitted,

Judge Wickham  
Deborah Jameson

Board Approved: October 11, 2010