

Certified Professional Guardian Board

Monday, May 23, 2014 (8:00 a.m. – 9:00 a.m.)

Telephone Conference

Proposed Meeting Minutes

Members Present

Judge James Lawler, Chair
Judge Robert Swisher, Vice-Chair
Commissioner Rachelle Anderson
Mr. Gary Beagle
Ms. Rosslyn Bethmann
Dr. Barbara Cochrane
Ms. Nancy Dapper
Mr. William Jaback
Judge Sally Olsen
Ms. Emily Rogers
Ms. Carol Sloan

Members Absent

Mr. Andrew Heinz
Mr. Gerald Tarutis

Staff

Ms. Shirley Bondon
Ms. Carla Montejo
Ms. Sally Rees
Ms. Kim Rood

1. Call to Order

Judge James Lawler called the meeting to order at 8:05 a.m. Judge Lawler welcomed Board members and members of the public to the meeting.

2. Board Business

Approval of Minutes

Judge Lawler asked for changes or corrections to the April 14, 2014 telephone conference proposed minutes.

Motion: *A motion was made and seconded to approve the minutes from the April 14, 2014 meeting. Mr. Jaback asked that the minutes include more detail regarding the discussion that occurred about a letter from Bridge Builders, Inc. and the compensation of guardians. Mr. Jaback agreed to provide an addendum to the minutes that includes the details he thought necessary. The motion passed.*

Staff indicated to the Chair that they were aware that an unidentified individual was circulating his or her personal notes to stakeholders regarding the informal discussion that occurred at a scheduled board meeting, May 12, 2014, where the Board conducted no business because there wasn't a quorum. The heading of the personal notes reads "CPGB Meeting, May 12, 2014, Unofficial Board Minutes." Judge Lawler cautioned everyone that the Board could not vouch for the accuracy or completeness of the document.

First Draft of Stakeholder Communications Plan

Judge Lawler asked staff to present the first draft of the Stakeholder Communications Plan.

Staff asked Board members to review the Stakeholder Communications Plan, paying special attention to Table 1, which list stakeholders, stakeholder types, involvement types and communication media. Please send proposed revisions to staff. Four communication methods are contemplated – board meetings, email (listserv), web postings and small group stakeholder meetings.

When the Board is considering a rule, regulation or policy proposal or revision, information will be mailed to the contact person for each stakeholder group and to individuals requesting written input. When comments are received they will be posted on the web for public review.

If a stakeholder group wants to discuss a proposal with a Board member, the group can contact the Board member or the Administrative Office of the Courts (AOC) and request a meeting. Likewise, any Board member may choose to hold a meeting with stakeholders. Stakeholder groups and individual Board members will be responsible for all meeting arrangements.

There was discussion regarding how Board members should present themselves and what they should say when meeting with stakeholders. Two views were discussed - Board members do not speak for the Board and thus they share their personal views during stakeholder meetings or Board members should be careful to present the Board's view regarding issues discussed and not their personal view. The Board agreed that this topic required additional conversation and clarity.

The Communications Plan is fluid and procedures will evolve and be fine-tuned as the process evolves. In some instances, the process will extend the comment period. Generally, stakeholder involvement will occur before a rule or regulation is drafted, but proposed rules and regulations that have been drafted will proceed as drafted. Staff clarified that a consultant is an individual and an advisor is an organization.

Motion: *A motion was made and seconded to approve the Communications Plan and send the first request for comment, which will address the question of whether a certified professional guardian agency should be owned by certified professional guardians only. The motion passed.*

3. Executive Session

4. Reconvene and Vote on Executive Session Discussion Applications Committee¹

Mr. Jaback presented three applications on behalf of the Applications Committee.

¹ *Members of the Applications Committee abstained from voting.*

Motion: A motion was made to conditionally approve the application of Julie Gardiner subject to her completion of the UW mandatory training. The motion did not pass. Application denied.

Motion: A motion was made and seconded to conditionally approve the application of Barbara Schreck subject to her completion of the UW Guardianship Certificate Program. The motion passed.

Motion: A motion was made and seconded to approve the application of Terri Stein. The motion passes.

5. Correspondence

Judge Lawler called everyone’s attention to a letter from Bridge Builders, Ltd.

6. Adjourn

Meeting adjourned at 8:45 a.m. The next scheduled meeting is June 9, 2014 at the SeaTac Office Center, 18000 International Blvd., SeaTac, WA 9:00 a.m. to 3:00 p.m.

Recap of Motions from May 23, 2014 Meeting

Motion Summary	Status
<p>Motion: A motion was made and seconded to approve the minutes from the April 14, 2014 meeting. Mr. Jaback asked that the minutes include more detail regarding the discussion that occurred about a letter from Bridge Builders, Inc. and the compensation of guardians. Mr. Jaback agreed to provide an addendum to the minutes that includes the details he thought necessary. The motion passed.</p>	Passed
<p>Motion: A motion was made and seconded to approve the Communications Plan and send the first request for comment, which will address the question of whether a certified professional guardian agency should be owned by certified professional guardians only. The motion passed.</p>	Passed
<p>Motion: A motion was made to conditionally approve the application of Julie Gardiner subject to her completion of the UW Guardianship Certificate Program. The motion failed. Her application for certification was denied.</p>	Failed
<p>Motion: A motion was made and seconded to conditionally approve the application of Barbara Schreck subject to her completion of the UW mandatory training. The motion passed. Her application for certification was approved.</p>	Passed

<p>Motion: <i>A motion was made and seconded to approve the application of Terri Stein. The motion passed. Her application for certification was approved.</i></p>	<p>Passed</p>
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<p>Action Items</p>	<p>Status</p>
<p><i>Staff will send the Communications Plan and the first request for comment using the process outlined in the plan to stakeholders.</i></p>	<p>In Process</p>

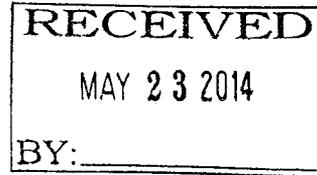
Correspondence

Elder Law Section



of the Washington State Bar Association

May 21, 2014



Judge James Lawler, Chair
Certified Professional Guardianship Board
1112 Quince St. SE
P.O. Box 41170
Olympia, WA 98504-1170

Re: CPGB Communication Plan

Dear Judge Lawler:

I am writing to request that the "Washington State Bar Association Elder Law Section Executive Committee" be expressly named as a stakeholder in Section C of the Communication Plan that your Board is considering. As you know, many members of our State Bar Section are actively involved with issues relating to the CPGB and our committee is desirous of being assured of input opportunities with respect to CPGB rules and policies. We do not feel the current designation of "County Bar Associations/Elder Law Sections" appropriately identifies us.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Bleck".

Sean Bleck
Executive Committee Chair

Board and Committee Charters

In 2012, the Board for Judicial Administration (BJA), the policy body for the Washington Judicial Branch, appointed a workgroup to review the work of BJA and examine each judicial branch committee, association, board and committee. As a result of this effort, all judicial branch committees, boards and commissions, including the Certified Professional Guardian Board (Board), have been asked to develop a charter and implement committee standards.

The Board already had standards, but they weren't specified in a charter. In response to BJA's request, a proposed charter has been prepared for each committee and the Board. Charters will be discussed during the June 9th Board meeting.



Certified Professional Guardianship Board

CHARTER

- I. **Title:** Certified Professional Guardianship Board

- II. **Authorization:** GR 23

- III. **Purpose:** The Certified Professional Guardianship Board exist to protect the public by ensuring that services from members of the guardianship profession are provided in a competent and ethical manner.

The Board has the authority to:

- Set standards as to who may enter the profession;
- Set standards of practice for those working in the profession;
- Create rules for when and how members may be sanctioned or removed from the profession, including a process to investigate grievances; and
- Establish a complaint and appeal process which allows the public and members of the profession to raise concerns about services professionals provide.

- IV. **Policy Area:** Regulation of Professional Guardians.

- V. **Expected deliverables or recommendations:**

The Certified Professional Guardianship Board is the regulatory authority for the practice of professional guardianship in Washington State. The Board is charged with establishing the standards and criteria for the certification of professional guardians, as defined by [RCW 11.88.008](#).

The Board shall:

- Process applications for guardianship certification;
- Adopt and implement policies, regulations and standards of practice;
- Adopt and implement a professional guardian training program;
- Adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty,

standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;

- Hold meetings as necessary; and
- Establish and collect fees to support the duties and responsibilities of the Board.

The Board may:

- Investigate to determine if an applicant for certification meets the certification requirements;
- Recommend certification to the Supreme Court;
- Deny guardianship certification;
- Adopt and implement regulations for guardian continuing education; Investigate to determine whether a professional guardian has violated any statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians;
- Take disciplinary action and impose disciplinary sanctions based on findings that establish a violation of an applicable statute, duty, standard of practice, rule, regulation or other requirement governing the conduct of professional guardians; and
- Issue written ethics opinions.

VI. Membership:

Membership of the Board is specified in GR 23 as follows:

The Supreme Court shall appoint a Certified Professional Guardian Board ("Board") of 12 or more members. The Board shall include representatives from the following areas of expertise: professional guardians; attorneys; advocates for incapacitated persons; courts; state agencies; and those employed in medical, social, health, financial, or other fields pertinent to guardianships. No more than one-third of the Board membership shall be practicing professional guardians.

Current Membership:

Name	Representing	Date First Appointed	Term Expires
Judge James Lawler, Chair	Lewis County Superior Court	10/1/09	9/30/15
Judge Robert Swisher, Vice-Chair	Benton and Franklin Counties Superior Courts	10/1/09	9/30/15
Comm. Rachelle Anderson	Spokane County Superior Court	10/1/12	9/30/15
Gary Beagle	Certified Professional Guardian	10/1/07	9/30/16

Rosslyn Bethmann	Arc of Spokane	10/1/12	9/30/15
Dr. Barbara Cochrane	Professor, UW School of Nursing	12/1/10	9/30/16
Nancy Dapper	Senior Interests	10/1/07	9/30/16
Andrew Heinz	Washington State Bar Association	10/1/12	9/30/15
William Jaback	Certified Professional Guardian	10/1/10	9/30/16
Judge Sally Olsen	Kitsap County Superior Court	10/1/11	9/30/14
Emily Rogers	Arc of Washington	5/1/10	9/30/14
Carol Sloan	Adult Protective Services, DSHS	12/1/10	9/30/14
Gerald R. Tarutis	Washington State Bar Association	10/1/13	9/30/16

VII. **Term Limits:**

The term for a member of the Board shall be three years. No member may serve more than three consecutive full three-year terms, not to exceed nine consecutive years, including any unfilled term. Terms shall be established such that one-third shall end each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later.

VIII. **Boards/Commission Performing Similar Function:** The Interpreter Commission credentials spoken language interpreters.

IX. **Potential Partners:** SCJA Guardianship and Probate Committee, Interpreter Commission, Minority and Justice Commission, Board for Court Education, Access to Justice Board

X. **Reporting Requirements:** Annually to the Supreme Court.

XI. **Budget Requested:** \$45,000

XII. **AOC Staff Support Requested:** 30 to 40 hours per month.

XIII. **Recommended Review Date:**

Proposed Charter Completed: June 2, 2014
Adopted: Mo/Day/Year
Amended: Mo/Day/Year



Certified Professional Guardianship Board

STANDING COMMITTEE CHARTER

- I. **Committee Title:** Application/Certification
- II. **Authorization:** GR 23
- III. **Purpose:** The Application/Certification Committee has the following duties:
 1. Review applications for certification and recommend approval or denial to the Certified Professional Guardianship Board;
 2. Monitor compliance with annual recertification requirements;
 3. Recommend revisions to regulations establishing the requirements for certification and annual recertification.
- IV. **Policy Area:** Credentialing of candidates for guardianship certification.
- V. **Expected deliverables or recommendations:** Recommend approval or denial of certification and revisions to application and certification regulations.
- VI. **Membership:**

The Chair of the Board shall appoint the members of the Certification and Application Committee. The Chair of the Board shall designate one of the committee members as the committee chair. The term of all members, including the chair, shall be one year.
- VII. **Committees Performing Similar Function:** None. The Interpreter Program credentials spoken language interpreters, but AOC staff performs all functions associated with approving and denying applications for certification or registration.
- VIII. **Potential Partners:** None.

- IX. **Reporting Requirements:** As Needed to Certified Professional Guardianship Board.
- X. **Budget Requested:** \$36,000 (Half time Program Assistant).
- XI. **AOC Staff Support Requested:** 20 hours per week.
- XII. **Recommended Review Date:**

Draft Completed: June 2, 2014
Adopted: Mo/Day/Year
Amended: Mo/Day/Year



Certified Professional Guardianship Board

STANDING COMMITTEE CHARTER

- I. **Committee Title:** Education Committee

- II. **Authorization:** GR 23

- III. **Purpose:** The Education Committee has the following duties:
 1. Recommend, review, ratify and monitor staff approval of continuing education requirements for professional guardians;
 2. Monitor guardian compliance with continuing education requirements;
 3. Identify for each continuing education reporting period the emerging issue(s) that should be addressed in guardianship education;
 4. Serve on the UW Guardianship Certificate Program advisory committee charged to review and approve the training required for initial certification as a professional guardian; and
 5. Respond to requests from the Washington Court's Board for Court Education to recommend education for judicial officers, which addresses guardianship standards.

- IV. **Policy Area:** Initial and continuing education of professional guardians and education of judicial officers.

- V. **Expected deliverables or recommendations:** Improvements to the UW Guardianship Certificate Program, continuing education requirements and the emerging topics that should be included in training.

VI. Membership:

The Chair of the Board shall appoint the members of the Education Committee. The Chair of the Board shall designate one of the committee members as the committee chair. The term of all members, including the chair, shall be one year.

VII. Committees Performing Similar Function: Superior Court Judges' Association Guardianship and Probate Committee, and the Board for Court Education.

VIII. Potential Partners: Education committees for all Superior Court Commissions (Gender and Justice, Interpreter, Minority and Justice), SCJA Guardianship and Probate Committee and Board for Court Education.

IX. Reporting Requirements: As Needed to Certified Professional Guardianship Board

X. Budget Requested: None.

XI. AOC Staff Support Requested: 2 hours per month.

XII. Recommended Review Date:

Proposed Charter Completed: June 2, 2014

Adopted: Mo/Day/Year

Amended: Mo/Day/Year



Certified Professional Guardianship Board

STANDING COMMITTEE CHARTER

- I. **Committee Title:** Nominating Committee
- II. **Authorization:** GR 23
- III. **Purpose:** The Nominating Committee has the following duties:
 1. Receive and review letters of interests from any person interested in becoming a board member. Assess an applicant's relevant background, experience and interest. Determine if potential conflicts of interests can be mitigated or diffused and are not significantly adverse to the mission of the board. Evaluate nominees based on the demographic and experience needs of the Board.
 2. Provide two nominees to the Supreme Court for each vacancy.
- IV. **Policy Area:** Board Membership
- V. **Expected deliverables or recommendations:** Recommend nominees for board membership.
- VI. **Members:** The Chair will appoint members as needed.
- VII. **Committees Performing Similar Function:** Every Supreme Court board and commission should have a nominating committee.
- VIII. **Potential Partners:** Every Supreme Court board and commission.
- IX. **Reporting Requirements:** As Needed to Certified Professional Guardianship Board
- X. **Budget Requested:** None
- XI. **AOC Staff Support Requested:** Five to ten hours per year.

XII. Recommended Review Date:

Proposed Charter Completed: June 2, 2014

Adopted: Mo/Day/Year

Amended: Mo/Day/Year



Certified Professional Guardianship Board

STANDING COMMITTEE CHARTER

- I. **Committee Title:** Regulations, Ethics Advisory and Appeals

- II. **Authorization:** GR 23

- III. **Purpose:** The Regulations, Ethics Advisory and Appeals Committee has the following duties:
 1. Coordinate proposed regulation changes for consistency among all regulations;
 2. Review all regulations for necessary updates;
 3. Review all requests for ethics advisory opinions and draft responses to those requests the Committee decides to answer;
 4. Approve or deny appeals; and
 5. Other duties as assigned by the Chair of the Board

- IV. **Policy Area:** Guardian regulation.

- V. **Expected deliverables or recommendations:** Recommend revisions to all regulations and draft advisory opinions.

- VI. **Membership:**

The Chair of the Board may appoint a Rules Committee, if necessary. The Chair shall designate the members of the committee, the chair of the committee, and the term of the committee members.

The Chair of the Board shall appoint an Ethics Advisory Committee consisting of at least three Board members. The Chair of the Board shall designate one of the members as the chairperson of the Committee.

The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Application Committee.

The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Financial Responsibility Committee. The Chair shall name one member of the panel as the chair of the panel.

- VII. **Committees Performing Similar Function:** The Interpreter Commission has a regulations and issues committee which performs similar functions.
- VIII. **Potential Partners:** Interpreter Commission
- IX. **Reporting Requirements:** As Needed to Certified Professional Guardianship Board.
- X. **Budget Requested:** None.
- XI. **AOC Staff Support Requested:** Five to ten hours per month.
- XII. **Recommended Review Date:**

Proposed Charter Completed: June 2, 2014

Adopted: Mo/Day/Year

Amended: Mo/Day/Year



Certified Professional Guardianship Board

STANDING COMMITTEE CHARTER

- I. **Committee Title:** Standards of Practice Committee
- II. **Authorization:** GR 23
- I. **Purpose:** The Standards of Practice Committee has the following duties:
 - Accept inquiries and complaints from the public;**
 1. Supervise the grievance and investigation process;
 2. Dismiss and conditionally settle grievances;
 3. Recommend disciplinary sanctions to the Board; and
 4. Recommend revisions to Standards of Practice and the disciplinary regulations.
- II. **Policy Area:** Guardian Discipline
- III. **Expected deliverables or recommendations:** Dismissal of grievances; Agreements Regarding Discipline and proposed Complaints; revisions to Standards of Practice and disciplinary regulations
- IV. **Members:**

The SOPC shall have three members appointed by the Board Chair. At least one member must be a certified professional guardian and at least one member must be an attorney or judicial officer. The Board Chair shall designate one member as the chair of the committee. All committee members will serve a term of one year.
- V. **Committees Performing Similar Function:** Interpreter Program Disciplinary Committee.
- VI. **Potential Partners:** Interpreter Program
- VII. **Reporting Requirements:** As Needed to Certified Professional Guardianship Board

VIII. **Budget Requested:** \$180,000

IX. **AOC Staff Support Requested:** Two grievance investigators.

X. **Recommended Review Date:**

Proposed Charter Completed: June 2, 2014
Adopted: Mo/Day/Year
Amended: Mo/Day/Year

Education Committee



June 6, 2014

TO: Certified Professional Guardian Board

FROM: Education Committee

RE: Summary of Teleconferences held March 24 and June 2, 2014 and the UW Advisory Board Meeting held May 8, 2014

March 24, 2014 Education Committee Teleconference

The Education Committee met March 24, 2014 to review the Board's contract with UW to provide mandatory training for prospective applicants for guardianship certification, which is scheduled for renewal August 2014. During the meeting, the committee determined that prior to renewing the contract they needed to evaluate program delivery. AOC staff was instructed to obtain the information listed below from the UW Guardianship Certificate Program Manager and schedule a second teleconference for the committee.

- **UW Guardianship Certificate Program Evaluations from the following sessions:**
 - 2011 – 2012
 - 2012 – 2013
 - 2013 – 2014
- **UW Continuing Education Course Evaluations from February 2014**
- **Instructor Resumes**

May 8, 2014 UW Guardianship Advisory Board Meeting

May 8, ten members of the UW Guardianship Certificate Advisory Board met. A summary of the meeting provided by Malia Morrison provided the following information:

In response to student feedback and the instructors' sense of what needed to be improved, the following changes were made for the 2013-14 year:

- Reviewed and fixed data and information inconsistencies in the case studies (hired former student to help with this).
- Improved the annual report module – created a video of a lecture to view alongside documents.
- Added a more in-depth lesson on accounting to the fall quarter – filmed a lecture to view alongside Excel demonstration.
- Flipped the classroom for communications topic – watched Jeff Ramirez lecture on video prior to class, had more discussion and interactive practice in class.
- Increased interactivity and practice during the live class sessions.

The Advisory Board discussed the program and the following recommendations were made:

- Comments revealed that class time was not used as well as the online time for several of the reasons described below.
- Students complained that other students often went on tangents, ranted and asked remedial questions. Suggestion to address are as follows:
 - To address the fact that people have a difficult time getting a good understanding of the profession before going into the program require everyone to take the lay guardianship training online (2 hour training). Malia is going to make that an admissions requirement.
 - Establish ground rules for discussion to keep people on track and respectful.
 - Provide students with a glossary of terms at the beginning of the program so everyone has a common vocabulary.
- There seemed to be a lot of student complaints about various guest speakers being off-topic, contradictory, and sometimes even offensive.
 - Suggestions to address this:
 - Start planning guest speakers much further out with the goal of having them confirmed before the quarter starts and listed on the syllabus.
 - Panelists should represent different perspectives (agency vs. sole practitioners, urban vs. rural, etc.).
 - Speakers should be prepped and vetted enough that they will deliver the curriculum they were brought in to cover. Instructors should provide them with detailed instructions of what they want to cover along with the syllabus or relevant curriculum for context at least three months out, then ask the speaker to send their slide deck or materials for review at least two weeks before coming in so there is time for review and revision. Stacey Bollinger has previous experience in speaker selection preparation for education, and would be willing to help with this process.
 - Malia will ask instructors to provide a description of speaker topics and dates and will see if the board has recommendations.
 - There were various opinions about who should be invited to address SOP issues. What the board members did seem to agree

on was that in the Certificate program, it was most appropriate to teach facts – what the SOPs are and what some of the current cases are – but less appropriate to share value judgments about SOPs or advocacy methods. In the CEU course, these value-based discussions do seem appropriate, as long as the instructor can facilitate the discussion to keep it from devolving into a gripe session.

- Shirley Bondon expressed concern that the advocacy methods used during the continuing education session held in February did not meet the definition of continuing education. Click on the link below to view definitions.

http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=200

She stated that based on her understanding of continuing education definitions, she would only approve a request for continuing education which included advocacy against the Board and the development of rules, regulations and standards of practice, if directed to do so by the Board. This seemed to fall well outside the definition of continuing education.

During the Board's April 2014 Planning Meeting, the functions of a regulatory body and a professional association were discussed. The functions discussed are listed below:

Function of Professional Association

- Provide networking opportunities.
- Publish information of interests to members.
- Conduct research.
- Hold conferences, seminars, workshops and trainings.
- Maintain job boards.
- Negotiate preferential rates for their members for various products and services – i.e. E & O Insurance.
- Lobby for the interests of their members.

Function of a Regulatory Body

- Define criteria for registration.
 - Prescribe code of ethics, rules of professional conduct and standards of practice.
 - Investigate complaints.
 - Discipline when violations occur.
 - Issue official documentation that attests to the fact that individuals have met the requirement for registration/certification/licensing.
- Manage the official registry.

The advocacy methods used appear to fall within the “*lobby for the interests of their members*” function, which is a function of an association and is not continuing education. So, while this is probably appropriate for a membership meeting of the Washington Association of Professional Guardians (WAPG), which should be left to WAPG to determine. It does not appear to be appropriate for approved continuing education for professional guardians. First, it doesn’t satisfy the definition of ethics, general or emerging issues (cultural diversity or business development) credit, and second, as some evaluations from the UW continuing education SOP discussion indicates, it doesn’t seem reasonable to subject continuing education participants who are not members of WAPG and have no interest in said advocacy to this discussion.

- There seems to be an interest among students to focus more on courts and court reporting. There were several suggestions in this area:
 - Pull video from different courtrooms (rural and urban), which are available publicly, and have students watch some of these and then discuss them or write up their reaction.
 - Suzanne Winger volunteered to host a field trip to court on one of the Friday sessions and then facilitate a discussion of it afterwards. There is currently an independent field trip requirement, but it can be intimidating to go to a courtroom alone, and it might be helpful to discuss it as a class immediately afterward.
 - Regarding accounting, Shirley Bondon volunteered to have her office put together a mock package of materials and assignment that they would grade for the students.
- It may be time to do a systematic review of all the material to make sure that everything is up-to-date, accurate and consistent. To date, updates and improvements have been made in a piecemeal fashion in response to student feedback, board suggestions or instructor initiative.
 - Set up a process for all newly developed materials to be proofed by someone other than the developer.
- A 2010 program graduate, indicated she would have liked a few more practical tools to help her when she finished the program. Various ideas were put forward:
 - Provide a list of resources that students could use after they are done with the program.
 - Provide the NGA guide to starting a successful guardianship business.
 - A possible class assignment would be to create a resource handbook that contains forms to use in practice, local contacts, court information, etc. relevant to where you want to practice.

New Instructor/TA Position for 2014-15 Program

Malia handed out applications that have been received for the instructor position. The Advisory Board discussed and had the following comments:

- Instructors who are attorneys, should have experience serving as an attorney for IP clients and not just guardians.
- The practice of an instructor attorney candidates should be dedicated to guardianship/elder law.
- The value in hiring an attorney in this position, is that they would have experience and could provide feedback to students on how to properly fill out various legal forms.

June 2, 2014 Education Committee Teleconference

The Education Committee met June 2, 2014 to discuss conclusions made based on a review of the materials listed below, which staff obtained from Malia Morrison, Assistant Director, UW Professional & Continuing Education.

UW Guardianship Certificate Program Evaluations:

2011 – 2012

- Autumn 2011 – Numeric evaluation for Leesa Arthur (Camerota) and student comments for the course.
- Winter 2012 - Numeric evaluation for Leesa Arthur (Camerota) and Jamie Shirley and student comments for the course.
- Spring 2012 - Numeric evaluation for Jamie Shirley and student comments for the course.
- Exit survey and statistics.

2012 – 2013

Autumn 2012 UW tried using a new online evaluation form. The response rate was low and the evaluations were deemed invalid, so there are no evaluations for this quarter.

There are no numeric evaluations for Leesa Arthur (Camerota) for the entire course because evaluations were ordered by another member of the UW staff while Malia Morrison was on maternity leave, the staff person didn't realize that there was more than one instructor. However, student comments address Leesa's performance. The numeric evaluation for Jamie Shirley for Winter 2013 was also not available.

- Spring 2013 - numeric evaluation for Jamie Shirley and student comments for the course.
- Exit survey and statistics.

2013 – 2014

This course was scheduled to end May 31, 2014. Only evaluations from the first quarter were available.

- Autumn 2013 - Numeric evaluation for Leesa Arthur (Camerota) and Jamie Shirley and student comments for the course.

Please note that Dan Smerken is a teaching assistant and according to UW has a much lesser role than Leesa and Jamie; therefore numeric evaluations are not requested for Dan.

UW Continuing Education Course

February 2014

This course included one in-person class and an online component. The students who completed the in-person class were not required to take the online course. The one day in-person class was held in Spokane and Bellevue. Spokane (Leesa Arthur (Camerota) – Written students comments.

- Bellevue (Dan Smerken) – Written student comments.
- Numerical evaluation for online portion of the course.

Resumes

Resumes were provided for Leesa and Jamie.

Committee Action

- The Committee directed staff to follow up with Malia Morrison regarding when and if the recommendations discussed during the May Advisory Board meeting would be implemented.
- The Committee also asked staff to collaborate with UW to develop and administer a brief survey to graduates of the UW Certificate Program to gather additional information regarding potential improvements.
- The Committee recommends continuing the contract with the UW. Staff was directed to submit a revised version of the existing contract to the Committee for review and approval. The contract should include an addendum which addresses the improvements that should be made by a date certain.

Regulations Committee



WASHINGTON
COURTS

June 3, 2014

TO: Certified Professional Guardian Board (Board)

FROM: Shirley Bondon, Manager, Office of Guardianship and Elder Services

RE: Comparing the Disciplinary Processes of the Certified Professional Guardian Board and the Department of Health (DOH)

Public Disclosure – DOH (UDA) and the Board

January 2013, in response to a request from Tom Goldsmith, Chief Justice Madsen asked the Board to submit a written public comment responding to a proposal to amend proposed GR 31.1, so that public access to professional guardian records would be governed by standards set forth in the Uniform Disciplinary Act (UDA). The Board reviewed the UDA and determined that the Board's disciplinary process was very similar to the UDA with one significant exception – unlike the UDA, information about complaints that did not warrant investigation and complaints determined to warrant no cause for action after investigation are not subject to full un-redacted public disclosure.

Pursuant to Board regulations, grievances dismissed without investigation and those dismissed after investigation that did not warrant action are disclosed upon written request using established procedures for inspection, copying, and disclosure with identifying information about the grievant, incapacitated person, and professional guardian and/or agency redacted. A request for dismissed grievances must cover a specified time period of not less than 12 months. After review, the Supreme Court Rules Committee decided that disclosure of guardian records will be governed by GR 31.1 when effective, disclosure will mirror the UDA.

Disciplinary Process – DOH (UDA)¹ and Board (Regulation 500)²

Early in 2014, new board member Gerald Tarutis, shared his experience with the UDA and the disciplinary process employed by the Department of Health (DOH) with several

¹ See Attachment A

² http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=regindex&Reg=500

members of the Board. March 2014, the Regulations Committee requested an opportunity to learn more about the UDA before completing its review of Board Disciplinary Regulation 500. June 2, 2014, Kristi Weeks, Director, Office of Legal Services, Department of Health, briefed members of the Regulations Committee regarding the UDA and DOH's disciplinary process.

The Board's Disciplinary Process is very similar to the UDA, with three significant differences. First, prior to hearing, almost all decisions regarding grievances received by DOH are made by panels comprised of three members of a board or commission. Unlike the Board's process, decisions made by a panel are final and do not require Board approval. Second, DOH has significant staff, approximately 64, and as a result the function of investigator and staff attorney are separate. Unlike the Board, where prior to filing a complaint, investigator and attorney functions are performed jointly by two staff members. Third, hearings officers are attorneys employed of DOH, whereas the Administrative Office of the Courts contracts with attorneys who serve as hearings officers.

Operations – DOH and Guardian Program

DOH regulates 400,000 health care providers and 83 professionals. They receive 10,000 grievances annually, investigate 5,000 and take disciplinary action in 3,000. Approximately 27 percent of actions are resolved informally, 24 percent with agreed orders, 26 percent with default orders and six percent with final orders after hearing³.

In comparison, the Board regulates one profession and approximately 300 professionals. The Board received approximately 50 grievances annually, and takes disciplinary action in approximately six. Approximately 80 percent are resolved with agreed orders and two percent with final orders after hearing⁴.

Investigator Reports

Similar to guardian investigators, DOH investigators are either attorneys or have law enforcement backgrounds. Most if not all complete the Washington State Comprehensive Investigator Training sponsored by the Department of Enterprise Services.

The training provides the following framework for investigator reports⁵:

³ <http://www.doh.wa.gov/Portals/1/Documents/2000/UDAReport2011-2013.pdf>

⁴ <http://www.courts.wa.gov/content/PublicUpload/CPGB%20Annual%20Reports/2010-13%20Grievance%20Report.pdf>

⁵ Attachment B

I – Issue
R – Rule and Elements
A- Analysis
C – Conclusions - Did a violation occur?

Board Member Guidelines

Model Code of Ethics

for
Members of Regulatory Boards
for the
Licensed Professions

Presented by the
Task Force to Develop a Regulatory Code of Ethics

Federation of Chiropractic Licensing Boards

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April 17, 1999

Model Code of Ethics for Members of Regulatory Boards For the Licensed Professions

INTRODUCTION

At its Leadership Conference in July 1998, which focused on ethics, the Federation of Associations of Regulatory Boards (FARB) noted that many professions have developed ethical codes for their practitioners. However, the Conference also noted the absence of any parallel document guiding the work of the regulators of those professions. Therefore, the leadership of FARB authorized the drafting of a model code of ethics for members of regulatory boards for the licensed professions.

Since the idea was generated by the attending representatives of the Federation of Chiropractic Licensing Boards (FCLB), that organization was requested to take the lead on the model code project. Consequently, the *Model Code of Ethics for Members of Regulatory Boards for the Licensed Professions* has been created for initial use by the FCLB and its member boards. Subsequently, it will be presented for consideration by FARB for use in all the regulated professions. As a model, the Code is intended to be considered for adoption or adaptation by individual regulatory boards or their umbrella agencies.

The purpose of the Code is to instill and assure the public's trust and confidence in its regulatory boards for the licensed professions. That trust must embrace the integrity of the people who serve on those boards, including the qualifications for public service that attracted their appointment.

At its essence, the Code is a set of expectations held by the regulatory authority for each profession that can help guide individual board members in their decision-making. It can also support the recruitment and selection of members for the regulatory boards by providing a mechanism for rating nominees to a board. Conversely, the Code can also provide a rationale for the removal of board members whose service does not meet expectations or is otherwise unacceptable.

In general, while in and of itself such a code does not carry the force of law, it may be used to provide practical detail to law, rules or regulations that address ethics and other areas pertinent to board service.

For any code to attract widespread understanding and acceptance, it must be founded on clear elements that unequivocally define and further its purpose. Given the purpose of the Code as assuring public trust in professional regulation, the following principles are presented as a foundation on which the Code was drafted and from which it may be modified to reflect changing circumstances.

Founding principles

- # The mission of a regulatory board for a licensed profession is to ensure that the public will have access to competent, safe, and ethical practitioners in the profession.
 - # Members of a regulatory board must familiarize themselves with the laws, rules, regulations, policies and procedures that govern their service on the board.
 - # The work of regulatory boards for the licensed professions is public service, not private interest or group advocacy.
 - # Performance of public service is a bestowed privilege, not an earned or inherited right; thus, all who serve do so at the pleasure of their appointing authority.
 - # Regardless of whether a member of a regulatory board for a licensed profession is a licensee in that or some other profession, a consumer, or any other type of member, it is essential for each board member to represent the public; that is, all of the people.
 - # Members of regulatory boards must strive beyond the norm to avoid any actual or perceived conflict of interest that may compromise the integrity of the board.
 - # Members of regulatory boards must strive beyond the norm to avoid any relationship, activity or position that may influence, directly or indirectly, the performance of his or her official duties as a board member.
-

The Code presents expectations for public service by members of regulatory boards for the licensed professions in four areas:

- 1) Personal Qualities
- 2) Board Decisions and Actions
- 3) External Activities and Relationships
- 4) Accountability

1) Personal Qualities:

Personal qualities form the composite qualities of any group. Therefore, the recruitment and selection of group members is tantamount to the group's fulfillment of its purpose. Members of regulatory boards must personify a set of qualities particularly and conspicuously consistent with public service.

This section of the Code describes that set of personal qualities identified by regulators as those most likely to instill and assure the public's trust and confidence in its regulatory boards for the licensed professions.

2) Board Decisions and Actions:

Board recommendations, decisions and actions must always be in the interest of the public; that is, for the common good, not just for the good of some.

A board whose actions benefit the profession at the expense of the consumer or other groups cannot sustain public trust or confidence in its work. Eventually, the purpose of such a board will be revealed, not as protection of the public, but as protection of the profession. Actual or perceived, such a purpose is not merely inappropriate for a public regulatory body, but may be in violation of statutes governing the activity of such bodies.

Also, the processes by which regulatory boards make their decisions and take their actions should be matters of public record and, in many jurisdictions, are subject to open meetings laws.

This section sets forth expectations that may reasonably be held by the public for the activities of its regulatory boards for the licensed professions.

3) External Activities and Relationships:

In most cases, the external activities and relationships of members of any group have the potential for enriching the contributions of the group's members. However, governmental bodies constituted in law for the good of the general public must function in accordance with their statutory purpose. Moreover, their ability to function must be free from any influence external to the group, be it personal, financial, or otherwise, that may conflict with the achievement of the statutory purpose.

As governmental bodies constituted for public protection, regulatory boards for the licensed professions must exercise uncommon caution to avoid, declare and reconcile any actual or apparent conflicts of interest or affiliations of their members. In this regard, members of regulatory boards for the licensed professions are held to a higher standard of service than members of many other groups.

This section outlines the areas of potential conflicts of interest for board members as well as the actions the public can reasonably expect a board to take in order to avoid, declare or reconcile such conflicts.

4) Accountability:

Ethical boards are accountable to those they serve. A dedicated and purposeful effort must be made to seek out the ideas and concerns of the public and the licensees. Secondly, but also important, feedback and involvement must be solicited from the appointing or electing authority, legislature, and the regulated profession.

This section outlines some areas which should be evaluated periodically by the regulatory

board.

It is the sincere hope of the Federation of Chiropractic Licensing Boards that this document contributes to promoting the highest standards for selection of and service by the members of regulatory boards for chiropractic and all licensed professions.

Our vision is that this Code may play a part in enhancing the public trust in those boards, and ultimately, in ensuring that all citizens will have access to competent, safe, and ethical practitioners when seeking professional services.

Presented to the membership for consideration for adoption

**73rd Annual Congress
of the
Federation of Chiropractic Licensing Boards**

**April 17, 1999
Philadelphia, Pennsylvania**

Personal Qualities

Introduction

No human organization can function with integrity unless the people at its core are themselves fundamentally ethical. Core persons in an organization set the tone, create the leadership direction, and personify the organization's message heard by everyone, internally and externally.

People at the core of government organizations in a democracy have an added responsibility regarding ethical integrity: they are elected or appointed to uphold the public trust. Those persons so elected or appointed assume the lofty and highly visible responsibilities of public servants. The fiduciary relationship that characterizes public service exists between the public servant and all of the people and their organizations equally.

Therefore, regulatory boards for the professions should be constituted to represent:

1. ***The general consumer population of the regulated jurisdiction*** to the extent possible, including gender, race, ethnicity, religion, disability status, geography, socioeconomic level, and military service, and any other group historically under-represented in the particular profession to ensure that the services of the profession are accessible to all;
2. ***The profession and its practices***, including specialization practice areas, philosophical bases, practice settings, professional education programs, membership organizations, and research to ensure that regulatory decisions and actions take into consideration the full context of the profession, not just part of it; and
3. ***The electing or appointing authority*** as a public regulatory body carrying out the designated mission of ensuring the public health, safety and welfare.

An election or appointment to a regulatory board should be based on broad and open recruitment of individuals whose conduct personifies those qualities identified as particularly suited to public service. The personal qualities of an individual that constitute appropriate attributes for public service on a regulatory board for a profession are fairly uniform across professions and jurisdictional boundaries. Identification of those qualities by electing or appointing authorities is essential to ensuring the integrity of the body whose members conduct the work of regulating the professions in the interest of public health, safety and welfare.

To assist electing and appointing authorities in their efforts to identify qualified individuals, this section of the Code describes those personal qualities deemed most likely to instill and ensure the public trust and confidence in its boards and their members who regulate the licensed professions.

Personal Qualities of Members of Regulatory Boards

I. Integrity

- A. Has no criminal or professional misconduct record, nor is under current investigation of charges or complaints, and has an acceptable malpractice history
- B. Possesses sound moral principles, e.g., is upright, honest, sincere
- C. Has courage of convictions to withstand pressures to be swayed from public protection agenda
- D. Is honest about personal agendas and leaves them outside the board room
- E. Reveals any actual or perceived conflicts of interest to appropriately recuse self from decisions or actions in those areas of interest
- F. Maintains confidentiality associated with examinations, disciplinary proceedings, and other pertinent matters

II. Service

- A. Seeks and finds personal gratification through service to others
- B. Is available for all regulatory activities, to be called on short notice, to travel, to be flexible in scheduling commitments and handling cancellations, and is not over-booked with other obligations
- C. Provides accurate and timely submissions of reports, vouchers and other documentation associated with board service

III. Sacrifice

- A. Tolerates inconvenience, frustration, and scheduling conflicts to be available for board service
- B. Subjugates own need gratification to the greater good and, consequently, postpones, minimizes or foregoes it altogether
- C. Rises above temptations for personal gain and avoids mutual benefit transactions available to private sector leaders that would pose conflicts of interest in the public sector

IV. Vision

- A. Uses knowledge of regulatory history, concepts and rationale (including law, rule, regulation, and administrative policy) to articulate ideas and plans for refining, enhancing and developing measures of public protection, standards of licensure and practice, and systems for regulating practitioners of the profession
- B. Acts as a role model for the profession and general public by discussing and presenting Board mission and function in the community whenever appropriate
- C. Encourages public awareness of the standards and legal requirements of professional credentials, practices, and conduct

V. Commitment

- A. Understands and embraces the central mission of the regulatory board as protecting the public, not advocating for the profession
- B. Demonstrates interest and ability in learning about administering law, rule, regulation, policy and the necessary protocols and procedures
- C. Abides by the legal and ethical responsibilities associated with board membership
- D. Remains current with cross-professional issues and trends inside and outside the jurisdiction

VI. Consumer Advocacy

- A. Has experience in consumer advocacy and/or civic or public service organizations
- B. Actively seeks to provide relevant information about professional practice and regulation to the consumer public and its organizations, including the soliciting of consumer concerns and ideas
- C. Provides appropriate nominations of individuals qualified to be consumer members of the board

VII. Diversity and Inclusiveness

- A. Values diversity of board membership representative of the general population in the jurisdiction
- B. Actively promotes representative diversity in the profession with the understanding that such diversity not only ensures inclusive and comprehensive decisions and actions by the board, but also maximizes the opportunity for all people to be able to access needed services of the profession
- C. Operates primarily on the basis of consensus-building, cooperation, conflict resolution and team effort, not individualism, egotism, factionalism, charisma or confrontation
- D. Accepts conflicts as they arise in the normal course of events and approaches them as opportunities for greater understanding, team-building and improved function

VIII. Fairness and Balance

- A. Is deliberative, not quick to judge, and approaches the work of the board without bias, dispassionately, disinterested, and dissociated from positions on partisan issues
- B. Respects the rights of all parties
- C. Is mindful of standards and strives to interpret them to be as inclusive as possible, not exclusive
- D. Understands the difference between high and minimally acceptable standards of competence and practice
- E. Understands and applies processes and procedures uniformly to all individuals and circumstances

Board Recommendations, Decisions, and Actions

Introduction

Board recommendations, decisions, and disciplinary actions constitute almost all publicly visible and legally scrutinized regulatory activity. Consequently, all such activity needs to meet the highest standard of ethical conduct possible. Boards whose recommendations, decisions, and disciplinary actions benefit the profession at the expense of the consumer cannot sustain the public trust, and violate their ethical and legal charge to protect the public.

In a democratic society, the public business must be performed in an open and public manner. The citizens must be fully aware of and able to observe the performance of public officials, and attend and listen to the deliberations that go into the making of public policy. The people must be informed if they are to retain control over their public servants. The welfare of the citizenry depends on a healthy public process to enable the government to operate for the benefit of those who created it, and whom it serves.

This section of the Code outlines the general considerations forming the boundaries of regulation, and discusses the important roles boards undertake in issuing recommendations, decisions, and disciplinary actions.

The first of the following four sections, General Considerations, must be understood and referenced through the remaining three sections.

I. General Considerations

- A. **Overall principle:** Ethical conduct begins with each regulatory board meticulously following all laws which govern its recommendations, decisions and disciplinary actions.
- B. **Jurisdictions:** All regulatory boards function under laws, rules, and regulations written within their respective jurisdictions and/or “umbrella agencies”
 - # professional regulation
 - # administrative services
 - # department of state
 - # other
- C. **Scope:** Such laws may be:
 - # international
 - # federal or national
 - # state, province, territory, commonwealth, district
 - # county, parish
 - # municipal

D. **Sources:** Such laws may be found in different sections of each jurisdiction's codes, and must be reviewed frequently:

- # R.I.C.O., racketeering, or anti-trust
- # bribery or corrupt influence
- # criminal
- # administrative procedures or other "umbrella" agency
- # ethics
- # conflict of interest codes or guidelines
- # equal opportunity
- # Americans with Disabilities Act

E. **Manner of conduct:** All board recommendations, decisions, and actions must be conducted in as fair, equitable, impartial, and non-partisan manner as possible. It must also be noted that each board's reputation is largely created by the staff who first encounter the public and the profession.

- # Board members and staff must represent the highest standards of ethical and professional conduct
- # All board activity must be carefully documented and well organized for future reference and scrutiny
- # Board members must ensure that both the professional and public members of the board are equal partners with unique perspectives, who value one another's insights, comments, and experiences
- # Board members must not serve as spokespersons for the board unless properly designated by the board

II. Board Recommendations

A. **Advice on legality and propriety:** Licensees will occasionally query boards about the legality and propriety of certain procedures and activities. Whenever possible, boards should define clearly what is acceptable and unacceptable. Boards must, at the same time, refrain from pre-forming, pre-judging, or freely giving legal opinion or advice. Information can be communicated to the public through:

- # Rules and regulations
- # Public forums or focused hearings
- # Newsletters
- # Attorney general or counsel office opinions
- # Internet websites
- # Position papers

B. **Establishing professional code of ethics:** Boards may wish to consider helping

to create a national or international code of ethics for the profession if one does not exist. In professions with existing ethical standards, those should be widely and vigorously disseminated.

- C. ***Equivalent licensure criteria:*** To fairly and ethically address concerns relating both to protecting the public and assuring access to qualified practitioners, boards may wish to consider recommending that their jurisdiction's licensure criteria become comparable or equivalent across jurisdictional boundaries. This may serve to assure the public of acceptable levels of training and experience as well as potentially to permit greater interjurisdictional mobility. Areas of interest include:
- # Adoption of national examinations where available and appropriate
 - # Adoption of uniform pre-professional criteria, with time-frames reflecting changing requirements
 - # Adoption of a standard number of years in practice for endorsement / reciprocity
 - # Determination of acceptable prior malpractice history through appropriate profession-specific or interprofessional databanks (e.g., CIN-BAD, NPDB)
- D. ***Criteria for removing members:*** Boards may wish to consider developing and standardizing criteria for recommending the removal of non-contributing or ethically compromised board members. *It is noted that board membership frequently occurs as an extension of the political process, along with its implied limitations.*

III. Board Decisions

- A. ***Focused on mission:*** All board decisions must be made with the primary mission squarely in mind: Each board is charged, in some fashion or language, with protecting the public; all other considerations become secondary.
- B. ***Boards part of larger regulatory community:*** All board decisions must be made with the awareness of the responsibility each board has to the larger regulatory community. Board responsibility does not end at the jurisdictional or professional border.
- C. ***Reporting board actions:*** Whenever and wherever legally appropriate, information on board decisions and actions should be reported:
- # To the general public (through rules and regulations, public forums or focused hearings, newsletters, Internet websites)
 - # To all licensees
 - # Appropriate profession-specific, interjurisdictional or interprofessional databanks (CIN-BAD, NPDB)
- D. ***Reporting criteria:*** Boards must be aware of reporting criteria to each appropriate

professional databank, and be aware of possible overlap when some licensees may be practicing in more than one discipline.

Be certain that all board decisions and actions are reported to the appropriate databank in a timely manner

Access the information in the interjurisdictional databanks on a regularly scheduled basis

Board staff must collate data and report any information obtained about a licensee at the next meeting for board consideration

E. **Proposed changes:** Boards may from time to time decide to propose changes in the laws and/or rules or regulations which govern the profession. When this occurs, the board should strive to:

Reach a consensus, in both language and sentiment, among board members about the need for the changes proposed

Be certain that the proposed changes are within the applicable codes and laws of the “umbrella” agency or jurisdiction

Hold all required or appropriate public hearings, including proper notification of licensees

Share, whenever possible, information and background research which supports or validates the changes with other interested boards

Be prepared to explain and defend, with any and all appropriate research and documentation, the proposed changes to the legislative and executive branches

IV. Board Disciplinary Actions

A. **Rights to due process:** Boards must establish procedures, within the enabling laws of the “umbrella” agency and/or jurisdiction, which ensure the rights to due process for ALL parties.

B. **Confidentiality:** In the healing arts especially, but in all board actions, confidentiality must be scrupulously maintained when and where such confidentiality is appropriate.

C. **No prejudgment:** Disciplinary actions must never be prejudged by preferential treatment of those involved because of personal values, friendship, or standing in the community.

D. **Recusal:** Boards must establish and follow a clear recusal process when real or strongly perceived conflict of interest arises.

E. **Proper processes:** Within the existing legal framework for each “umbrella”

agency or jurisdiction which governs disciplinary action, each board should strive to:

- # File adequate and timely notice of charges
- # Clearly communicate in writing with the respondent about discovery, evidence, board procedures, etc.
- # Share all information from respondents with all board members
- # Utilize alternative dispute resolution for cases which meet pre-established criteria
- # During hearings, allow full and open testimony: ask witnesses if they have anything else to say
- # Seek legal advice: be certain that current laws are being properly applied
- # Determine first if laws/rules have been violated; weigh the impact of sanctions secondarily
- # Maintain confidentiality with all parties, especially the media, during the proceedings
- # When appropriate under law, report in a timely manner public disciplinary actions to the public, licensees, interjurisdictional professional databanks, interprofessional databanks

External Activities

Introduction

Actions of individual board members will be evaluated both inside and outside the boardroom. Conduct must at all times be of the highest moral and ethical character. The action and interaction of the individual board members will reflect the integrity of the board.

Many areas of potential conflict will occur during a member's tenure and following retirement from active board service. Activities that are conducted outside of the board meeting and that are part of external activities should be closely evaluated for ethical conformity.

Many of these conflicts will be painfully obvious while others will be only conflicts of perception. It is suggested that if a board member senses possible conflict of interest, he/she may wish to consult an impartial third party for advice and direction (i.e., assistant attorney general, ethics commission, leadership of the board, and/or professional staff).

At all times, board members must make decisions that are directed by all ethical considerations. The board member's moral compass must always be truly pointed in the correct ethical direction.

To assist elected and appointed board members in their efforts to develop maximum awareness of areas of actual and perceived conflicts inherent in external activities, this section of the Code describes those areas most likely to jeopardize the public trust in the boards.

External Activities and Related Areas

I. Conflict of interest

- A. Conflict of interest is defined as having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of the board member's duties in the public interest.
- B. Board members must make public (and recuse themselves from) any conflict of interest that exists to ensure the integrity of the board and all of its decisions.

Disclosure and recusal are important tools to avoid actual or perceived conflict of interest. Board members must not overuse recusal as an excuse to avoid conflict in exercising their full responsibilities.

C. Types of Potential Conflict in External Activities

Personal conflicts are those actions that may ultimately have a personal consequence that is a direct or indirect effect of a decision or action. No decisions should be made that will advance the personal benefit of the board members. Some examples of personal conflict include:

- # **Personal gain:** Will this decision affect the board member's personal life in any direct way?
- # **Sexual favors:** Will this behavior affect the board member's position unfairly?
- # **Influence:** Will this behavior affect the board member's position unfairly? Will it result in unwarranted privileges or exemptions?
- # **Effects on personal relationship:** Will there be an effect on the board member's current, past or future personal relationship(s)?
- # **Benefits to those who have a relationship with the board member:** No decision should effect the personal or financial gain of anyone with whom the board member has a personal relationship
- # **Gift received:** Acceptance of any gift should be perceived as a bribe to influence present or future considerations.

Financial conflicts are those in which a board member or those with whom he/she has a personal relationship, may benefit financially, or be perceived as benefitting financially, from decisions by or the influence of the board member. Some examples of financial conflicts include:

- # **Employment Gain:** These may include opportunities for consulting, speaking / teaching, etc. Employment during and subsequent to board membership should not appear to be relate to any board matters.
- # **Financial Gain: effects on the board member's business:** Decisions and actions must not affect the future financial position of the board member's business. Contractual and creditor relationships also apply here.
- # **Outside Activities:** These may include present employment, investment, and/or business opportunities
- # **Recruitment of other professionals or patients into business opportunities:** Extreme care must be exercised to be certain no actual or perceived leverage of authority with the board position is used in this area.

II. Confidentiality

- A. At all times the board member must conform to the rules of confidentiality in dealings outside the boardroom
- B. Protected information obtained in the capacity of board member must remain confidential during and after board membership.

Actions prior to and subsequent to board membership: Termination of board membership does not dissolve the board member from responsibility. Actions must continue to be governed by the same rules that apply during active board membership. Confidentiality must be maintained on all confidential subjects that the individual was privy to as a board member.

III. Sexual Relationships

- A. No board member should engage in a sexual relationship with any other board member or staff during board membership, except as permitted by marriage.

IV. Professional Activities

- A. A board member should not serve as an officer or board member of a state professional trade association or state or provincial professionally-related trade group.

V. Representation of Responsibilities

- A. *Spokesperson:* A board member should not represent himself/herself as a spokesperson for the board to influence his/her status in areas outside of the business of the board.
- B. *Disclosure of information:* A board member should not share information with any other person, or encourage another person to act in any way prohibited to the board member.
- C. *Representation of responsibilities to others:* Actions or statements made to others outside of the board should not be designed to influence the outcome of any board decision.

Accountability

Introduction

An ethical board is accountable to all its stakeholders. These include:

- # The public, whose health and safety it is sworn to protect
- # The practitioners, whose livelihoods depend on fair and equitable adoption and application of statutes and regulations

In most instances, the board is also responsible to the appointing or electing authority, and to the regulated profession in general.

Boards should have in place internal and external assessment tools to review and evaluate their processes as they relate to public protection.

This section of the Code is designed to assist boards in assessing whether their processes are accountable to their stakeholders.

General assessment:

When and how does the board evaluate the overall organization, budget, procedures, legislative and policy activities, communications, involvement in national / international association of the profession's regulatory boards?

Some specific areas:

I. Does the board maintain appropriate record keeping?

Some areas may include:

- # Number of licensees
- # Number and general types of complaints made
- # Number and type of disciplinary actions taken
- # Documented amount of time it takes to handle a complaint, including number of investigative hours
- # Comparison of your licensed profession to others in your jurisdiction
- # Comparison of the licensed profession in your jurisdiction to the same profession nationally and internationally
- # Accurate budgets and financial reports, adequate funding, demonstrating cost-effectiveness, and revenue sources, value of volunteer time by board members
- # Clear and concise interpretations of practice issues, including catalogued legal opinions

II. What are the criteria to review the complaint process?

Some areas may include:

- # Has current system in place to track the complaint process
- # Re-evaluates the complaint process regularly for maximum effectiveness
- # Resolves complaints in a timely manner
- # Ensures procedures conform to accepted standards
- # Avoids bias
- # Is not arbitrary or capricious
- # Maintains adequate investigative resources
- # Reports all public actions to profession's central database
- # Offers expedited and alternative dispute resolution for cases meeting appropriate and predetermined standards

III. How does the board evaluate its public relations efforts to make board services available?

Some areas may include:

- # Use of Internet websites, properly and accurately indexed
- # Regular press releases to press, with appropriate designation of spokespersons
- # Consumer friendly education materials, widely distributed
- # Proactive reports to legislature
- # Regular newsletters or other communications tools sent to licensees
- # Board meeting locations varied maximize access to the board
- # Yellow pages listing
- # User surveys and feedback

IV. How does the board evaluate the effectiveness of its members?

Some areas may include:

- # Maintains orientation process for new members
- # Provides on-going orientation about hot issues
- # Values equally the opinions of both professional and consumer members
- # Has high level of attendance, high level of participation
- # Uses committees appropriately
- # Ensures that legal counsel is available at all meetings
- # Encourages appropriate involvement by staff
- # Requires members to be knowledgeable about ethical and legal responsibilities
- # Encourages members to continue their own education in the field of regulation
- # Supports diversity in composition of board

V. What are the bases for evaluating a board member for suitability for reappointment?

Some areas may include:

attends regularly

maintains confidentiality of board processes

is well prepared for meeting - reads materials before arrival

participates in discussion

is honest about personal agendas and leaves them outside the board room

APPENDIX: Reference documents

1. Glossary - *still under development*
2. Contents of a sample ethics code
3. A Framework for Ethical Decision Making
Michael McDonald (reprinted with permission by the author)
4. Sample case questions and discussion - *still under development*
5. Bibliography - *still under development*

APPENDIX 1
Glossary - still under development

APPENDIX 2

Contents of a Sample Ethics Code

- A. Purpose
- B. Definitions
- C. Body - Code of Conduct
 - 1. *Expectations*
 - Personal qualities - qualifications for service
 - Board decisions and actions
 - External activities and relationships
 - 2. *Actions which may constitute violations*
 - Threats
 - Bribery
 - Granting of sexual favors
 - Conflict of interest
 - Gifts
 - Private compensation
 - Trading in special influence
 - Use of public position for personal gain
 - Contracts with other jurisdictions
 - Disclosure of confidential information
 - 3. *Required actions in conflicts*
 - Disclosure
 - Recusal
 - Effect on quorum
 - 4. *Post-service restrictions*
 - Respect for protected information
- D. Range of sanctions - civil and criminal
 - 1. *Fines*
 - 2. *Imprisonment*
 - 3. *Removal from office*
- E. Process for waivers / securing advisory opinions
- F. Enforcement body (commission)
 - 1. *Composition / terms*
 - 2. *Compensation*
 - 3. *Powers and duties*
 - 4. *Reporting obligations*
 - 5. *Disqualifications from service*
 - 6. *Range of sanctions*
 - 7. *Confidentiality provisions*
 - 8. *Right of appeal to higher body*

APPENDIX 3 A Framework for Ethical Decision Making

Michael McDonald (reprinted with permission of the author)

1. *Identify the problem.*

- 1.1. ***Be alert; be sensitive to morally or politically charged situations.*** Look behind the technical requirements of your job to see the moral dimensions. Use your ethical resources to determine relevant moral standards. Use your moral intuition.
- 1.2. ***Gather information and do not jump to conclusions.*** While accuracy is important, there can be a trade-off between gathering more information and letting morally significant options disappear. Sometimes you may have to make supplementary assumptions because there is insufficient information and no time to gather more information.
- 1.3. ***State the case briefly with as many of the relevant facts and circumstances as you can gather within the decision time available.***
 - 1.3.1 ***What decisions have to be made?*** There may be more than one appropriate decision.
 - 1.3.2. ***By whom?*** Remember that there may be more than one decision-maker and their interactions can be important.

2. *Specify feasible alternatives.*

- 2.1. ***State the live options at each stage of decision-making for each decision-maker.*** You then should ask what the likely consequences are of various decisions. Here, you should remember to take into account good or bad consequences not just for yourself or your board, but for all affected persons (i.e. the public).

3. *Use your ethical resources to identify morally significant factors in each alternative.*

- 3.1. ***Principles.*** These are principles that are widely accepted in one form or another in the common moralities of many communities and organizations.
 - 3.1.1. ***Respect autonomy.*** Would I be exploiting others, treating them paternalistically, or otherwise affecting them without their free and informed consent? Have promises been made? Are there legitimate expectations on the part of others because I am a professional person?
 - 3.1.2. ***Do not harm.*** Would I be harming someone to whom I have a general or specific obligation as a professional or as a human being?
 - 3.1.3. ***Do good.*** Should I be preventing harm, removing harm, or even providing positive benefits to others?
 - 3.1.4. ***Be fair.***

- 3.2. **Moral models.** Sometimes you will get moral insight from modeling your behavior on a person of great moral integrity.
 - 3.3. **Use ethically informed sources.** Policies and other source materials, professional norms such as board policy, legal precedents, and wisdom from your religious or cultural traditions.
 - 3.4. **Context.** Contextual features of the case that seem important such as the past history of relationships with various parties.
 - 3.5. **Personal judgments, your associates, and trusted friends or advisors can be invaluable.** Of course, in talking a tough decision over with others, you have to respect confidentiality issues within the context of the individual situation.
4. **Propose and test possible resolutions.**
 - 4.1. **Perform a sensitivity analysis.** Consider your choice critically by considering which factors would have to change to get you to alter your decision.
 - 4.2. **Impact on others' ethical performance?** Think about the effect of each choice upon the choices of other responsible parties. Are you making it easier or harder for them to do the right thing? Are you setting a good example?
 - 4.3. **Would a good person do this?** Ask yourself what would a virtuous professional (one with integrity and experience) do in these circumstances?
 - 4.4. **What if everyone in similar circumstances did this?** Formulate your choice as a general maxim for all similar cases?
 - 4.5. **Does it seem right?** Are you still satisfied with your choice? If you are still satisfied, then go with your choice. If not, consider the factors that make you uncomfortable with a view to coming up with a new general rule with which you are satisfied.
 5. **Make your choice.**
 - 5.1. **Live with it.**
 - 5.2. **Learn from it.** This means accepting responsibility for your choice. It also means accepting the possibility that you might be wrong or that you will make a less than optimal decision. The object is to make a good choice with the information available, not to make a perfect choice. Learn from your failures and successes.

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APPENDIX 4
Sample case questions and discussion
Still under development

APPENDIX 5
Bibliography
Still under development

ETHICAL GUIDELINES FOR BOARD MEMBERS

(From guidelines developed by the Federation of Association Regulatory Boards)

1. **Public protection and impartiality:** Both the Board and members of the Board's staff must be fair, nonpartisan, and unbiased when working to fulfill the Board's mission to protect the public.
2. **Participation:** Full participation by all members of the Board is crucial to its success. For example, members cannot neglect their responsibility to attend meetings and participate in Board decisions. In some instances, however, individual members may need to refrain from participating in matters, such as if they might have a financial interest in the outcome, if personal bias might compromise objectivity, or if the appearance of personal bias might have a negative impact on the Board's credibility.
3. **Interacting with professional associations:** Board members should avoid "double duty," or situations where they assume official positions in trade or professional associations within any of the professions regulated by the Board.
4. **Speaking for the Board:** A member of the Board should speak or act for the Board only with proper prior authorization.
5. **Conduct:** Members of the Board should always act so as to protect the integrity of the Board, the Board's mission, and the participants in Board functions. Board members should recognize and respect their equal roles within the structure of the Board.
6. **Management issues:** Unless stipulated by statute, rule, or policy, members of the Board should not take part in the day-to-day management of the agency.
7. **Conflicts of interest:** Board members should reveal any actual or perceived conflicts of interest. Board members also should recuse themselves from involvement in decisions when a conflict of interest or a lack of objectivity exists.