

CERTIFIED PROFESSIONAL GUARDIAN BOARD

IN THE MATTER OF:

**E. ELIZABETH LINDLEY,
CPG No. 5216**

**CPGB NO. 2004-004B
2005-014 B**

On June 17, 2011, the Certified Professional Guardian Board closed this matter based on the guardian compliance with the requirements of the Agreement Regarding Discipline, dated September 14, 2009 in which the guardian agreed to attend an additional three hours of Ethics continuing education units in 2010. The guardian attended an additional 5.25 hours of Ethics units.

CERTIFIED PROFESSIONAL GUARDIAN BOARD

**E. ELIZABETH LINDLEY,
CPG No. 5216**

**CPGB No. 2004-004 B
2005-014 B**

**AGREEMENT REGARDING DISCIPLINE
AND STIPULATED FINDINGS**

Disciplinary Regulation 514

The parties, E. Elizabeth Lindley (Ms. Lindley), and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. Ms. Lindley has committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian record of Ms. Lindley and will be a public record and subject to public access.

1. JURISDICTION

1.1 At all times relevant herein, Ms. Lindley was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No. 5216. At all relevant times, Ms. Lindley was the

Executive Director and one of the designated certified professional guardians of Lifetime Advocacy Plus (LA+)¹, a certified professional guardian agency.

2. STATEMENT OF FACTS

2.1 On or about May 7, 2004, the Board opened a grievance, 2004-004, based on a referral from King County Superior Court. The court notified the Board that LA+ had disclosed to the court that the former Chief Financial Officer had unilaterally pre-paid agency expenses on an accrual basis, using fiduciary funds.

2.2 The Board opened a second grievance, 2005-014, based on a second referral from King County Superior Court on or about December 12, 2005. This grievance alleged that LA+ was at financial risk of losing its offices and was in debt to the landlord for unpaid rent of about \$40,000.

2.3 On or about June 10, 2004, in King County Cause No. 04-4-02008-2 SEA, the court appointed a Special Representative under RCW 11.96A to represent the interests of individuals having trusts or guardianships managed by LA+. Paulette Peterson, the Special Representative, was directed to report on a variety of issues, including LA+'s use of client funds, LA+'s knowledge of the improper transfers, LA+'s notification to third parties, and the effect of the shortage on any clients.

2.4 Ms. Peterson filed her report on or about May 10, 2005. Ms. Peterson summarized her findings, in pertinent part, as follows:

Knowledge of the Agency. The Executive Director, Ms. Lindley, either knew or should have known no later than February 2003 that transfers were being made from the fiduciary account to the agency account. A line item was specifically created in the agency's software to track these transfers. The line item appeared as a liability entitled "advance fees". Ms. Lindley authorized and signed large checks for payments from the fiduciary account to the agency account which were categorized as "advanced fees". One

¹ The Board entered into an Agreement Regarding Discipline with LA+ on August 4, 2008.

such transfer in the amount of \$60,000.00 occurred in February 2003. The accompanying email, requesting the transfer, was sent to Ms. Lindley at the time. If Ms. Lindley did not know, she should have known of the problem given the information that she had available to her.

2.5 On or about September 12, 2005, the Superior Court of King County issued an order making the following findings of fact:

- a. All accountings presented and approved by the Court were appropriate;
- b. That no particular accounting needs to be amended;
- c. That LA+ should have discovered the inappropriate transfers sooner;
- d. That notice to United Way was appropriate;
- e. LA+ has fully repaid the fiduciary account with interest;
- f. All LA+ clients now have separate accounts;
- g. Liability insurance is inapplicable;
- h. There is no civil liability of the agency;
- i. That prior Board of Director oversight was inadequate;
- j. That no civil liability of any board member or director exists;
- k. That no criminal liability exists, and
- l. That LA+ has instituted appropriate procedures to prevent future reoccurrences.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.1 through 2.13, Ms. Lindley's conduct constitutes violation of SOP 401.1, SOP 401.4, SOP 403, SOP 403.3, SOP 406, SOP 406.1, SOP 406.10, and SOP 406.12 which provide in pertinent part:

SOP 401.1 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and any other regulations or statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person. When a question exists between the standards and a statute, timely direction shall be sought from

the court. If a guardian is aware of a court order of the court in a specific case which may lead to a conflict with these regulations, the guardian shall disclose this to the court.

SOP 401.4 The guardian shall not act outside of the authority granted by the court.

SOP 403 The guardian shall exhibit the highest degree of trust, loyalty, attentiveness, and fidelity in relation to the incapacitated person.

SOP 403.3 All compensation for the services of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court.

SOP 406 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest.

SOP 406.1 The guardian shall know and obey the law related to managing an incapacitated person's estate. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW 11.88 and 11.92, and laws relating to employment, income, and taxes. The guardian shall hire competent professionals as appropriate to assure compliance with all statutes and regulations relating to the management of funds.

SOP 406.10 A guardian shall not commingle the funds of an incapacitated person with funds of the guardian or the funds of staff. A guardian may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

SOP 406.12 The responsibility to protect and preserve the guardianship estate rests with the certified guardian appointed by the court. When the guardian is an agency, this responsibility is that of the agency and the certified guardians identified with the Certified Professional Guardian Board as the responsible guardians for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian to provide appropriate oversight and review, in order to preserve the guardianship estate.

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

GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardian Board

...
...
(2) Duties and Powers.

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

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

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

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

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

4. AGGRAVATING AND MITIGATING FACTORS

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

4.1 **Aggravating Factors.** Negligent act, substantial experience as a guardian, number of incapacitated persons at risk of harm.

4.2 **Mitigating Factors.** The Board recognizes that Ms. Lindley took steps as the Executive Director of LA+ to correct the circumstances that led to the grievances. LA+ has resolved its financial problems, reduced its pro bono case load, created better accounting procedures and paid back with interest the money that was improperly transferred. The Board acknowledges that no individual client appears to have suffered any financial loss as a result of the improper transfers.

5. PRIOR RECORD OF DISCIPLINE

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

6. DISCIPLINARY SANCTIONS AND REMEDIES

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

6.1 Reprimand. The Board hereby imposes a letter of reprimand on Ms. Lindley. This Agreement constitutes the letter of reprimand and shall be placed in the Board's permanent disciplinary files for Ms. Lindley.

6.2 Notification of the Board. Ms. Lindley agrees to notify the Board within 30 days of any adverse finding by an auditor.

6.3 Staff Training. Ms. Lindley agrees to attend an additional 3 hours of Ethics continuing education units in 2010 for a total of 5 Ethics credits.

7. VIOLATION OF AGREEMENT

7.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, failure to notify of any adverse finding by an auditor and failure to obtain the additional Ethics credits in 2010.

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

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

8. NOTICE

This Agreement shall be retained by the AOC in Ms. Lindley's disciplinary file. This Agreement shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

9. ENTIRE AGREEMENT

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

10. SEVERABILITY

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

11. LAWS GOVERNING

This Agreement shall be governed by the laws of the State of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.

12. RIGHT TO COUNSEL

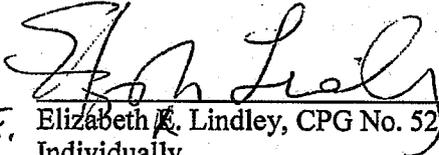
Ms. Lindley acknowledges that she has the right to individual counsel for representation in this disciplinary matter, at her expense, as set forth in Disciplinary Regulation 509.1.

13. PRESENTATION OF AGREEMENT TO THE BOARD

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

The SOPC reserves the right to withdraw this offer of settlement at any time prior to the presentation to the Board.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:


E. Elizabeth K. Lindley, CPG No. 5216
Individually

8/11/09
Date


Michael Olver
Attorney for Ms. Lindley
WSBA # 2081

8/12/09
Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

14th DAY OF September, 2009.


Hon. Kimberley Prochnau
Chair, Certified Professional Guardian Board