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# Washington State Certified Professional Guardian Board

2004 Report to the  
Washington State Supreme Court

March 2005

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## 1. INTRODUCTION

The following is the Certified Professional Guardian Board's 2004 Annual Report.

## 2. CERTIFICATION BOARD

### 2.1. 2004 Board Membership Changes

The terms of Judge Vicki L. Hogan, Mr. Ray Dingfield, Dr. Ruth Craven and Mr. John Jardine expired. Each was re-appointed by Chief Justice Alexander for an additional 3 year term. The term of Mr. Richard Sayre expired and Judge Van Nuys retired from the bench. They left the Board with much appreciation for their work on the Board. Judge M. Karlynn Haberly and Ms. Robin H. Balsam were appointed to the Board.

### 2.2. Current Board

Judge Vicki Hogan, Chair Pierce County Superior Court 930 Tacoma Avenue S, RM 534 Tacoma, WA 98402-2108 (253) 798-7566 (253) 798-7214 FAX supcrtdept5@co.pierce.wa.us Term ends 9/30/2007	Comm. Fred Aronow, Vice Chair Spokane County Superior Court 1116 W Broadway Spokane, WA 99260-0350 (509) 477-5702 ext. 6 (509) 477-5714 FAX faronow@spokanecounty.org Term ends 9/30/2005
Judge M. Karlynn Haberly Kitsap County Superior Court 614 Division Street Port Orchard, WA 98366-4683 (360) 337-7140 (360) 337-4673 FAX mhaberly@co.kitsap.wa.us Term ends 9/30/2006	Commissioner Scott A. Collier Clark County Courthouse PO Box 5000 Vancouver WA 98666-5000 (360) 397-2049 (360) 397-6078 FAX scott.collier@clark.wa.gov Terms ends 9/30/2006
Ms. Robin H. Balsam Commencement Bay Grdship Svcs 609 Tacoma Avenue South Tacoma, WA 98402 (253) 627-7605 (253) 572-0912 FAX rhb@balsamlaw.com Term ends 9/30/2008	Dr. Ruth F Craven, EdD, RN, FAAN Professor and Associate Dean University of WA School of Nursing Box 357260 Seattle WA 98195-7260 ruthc@u.washington.edu (206) 616-3549 (206) 543-6953 FAX Term ends 9/30/2007

<p>Mr. Raymond Dingfield  P.O. Box 2119  Shelton, WA 98584  (360) 426-6453  (Senior advocate)  rnmding@ix.netcom.com  Term ends 9/30/2007</p>	<p>Mr. Hank Hibbard  Legal Services Developer  Department of Social and Health Svcs  Aging &amp; Adult Services Administration  State Unit on Aging  PO Box 45600  Olympia, WA 98504-5600  (360) 725-2557  (360) 438-8633 FAX  hibbaea@dshs.wa.gov  Term ends 9/30/2005</p>
<p>Ms. Joy Isham  3454 Lakehurst Dr NW  Bremerton, WA 98312  (360) 373-9903  (360) 373-6089 FAX  Lisham1@yahoo.com  Term ends 9/30/2006</p>	<p>Mr. John Jardine  WA Assn of Professional Guardians  2212 Queen Anne Ave N  Seattle, WA 98109  (206) 285-6916  (206) 282-9358 FAX  johnj@serv.net  Term ends 9/30/2007</p>
<p>Mr. Michael J. Longyear, Attorney  Reed, Longyear, Malnati, &amp; Ahrens  PLLC  1415 Norton Bldg., 801 Second Ave  Seattle WA 98104-1522  (206) 624-6271 or (206) 447-8383  (206) 624-6672 FAX  mlongyear@rlmalaw.com  Term ends 9/30/2005</p>	<p>Mr. Tom O'Brien  Guardianship Services of Seattle  200 1st Ave W Ste 308  Seattle, WA 98119-4219  (206) 284-6225  (206) 284-6240 FAX  tomob@trustguard.org  Term ends 9/30/2006</p>
<p>Lori A. Petersen  WA Assoc. of Professional Guardians  Empire Guardianship Services  1410 W Dean Ave  Spokane WA 99201-1920  lori@empirecare.com  (509) 838-1933  (509) 458-6087 FAX  Term ends 9/30/2006</p>	<p>Mr. Gerald Reilly  Nursing Home &amp; Long Term Care Svcs  1017 Cardigan Loop NW  Olympia, WA 98502  (360) 754-0291  (360) 561-4212 (Cellular)  jerryreilly@msn.com  Term ends 9/30/2006</p>
<p>Winsor Schmidt, J.D., LL.M.  Chair and Professor  Dept. Health Policy &amp; Administration  Washington State University  PO Box 1495  Spokane WA 99210-1495  (509) 358-7981  (509) 358-7984 FAX  schmidt@wsu.edu  Term ends 9/30/2006</p>	

2.3. The Administrative Office of the Courts provides administrative support to the Board.

<p>Louise Andersen          Administrative Office of the Courts          P.O. Box 41170          Olympia WA 98504-1174          Louise.Andersen@courts.wa.gov          (360) 705-5302          (360) 586-8869 FAX</p>	<p>Lynne Alfasso          Administrative Office of the Courts          P.O. Box 41174          Olympia WA 98504-1174          Lynne.alfasso@courts.wa.gov          (360) 357-2157          (360) 357-2127 FAX</p>
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2.4. Current Committee Membership

<b>Education Committee</b>	
<ul style="list-style-type: none"> <li>• Certification education (GR 23 compliance);</li> <li>• Re-certification and mandatory education;</li> <li>• General education courses and credits;</li> <li>• Board and Judicial Education;</li> <li>• Judicial Conference and Commissioner CPG information;</li> <li>• Coordinate annual mandatory board training.</li> </ul>	<p><b>Hank Hibbard, co-chair</b>  <b>Mike Longyear, co-chair</b>          Dr. Ruth Craven          John Jardine          Tom O'Brien          Lori Petersen</p>
<b>Certification Committee</b>	
<ul style="list-style-type: none"> <li>• Review applications and issue follow up letters;</li> <li>• Monitor continuing reporting compliance;</li> <li>• Monitor non-certified identification; and</li> <li>• Review and make recommendations to the Board on application certification/denial/appeals.</li> </ul>	<p><b>Jerry Reilly, co-chair</b>  <b>Ray Dingfield, co-chair</b>          Judge Haberly          Robin Balsam          Ruth Craven</p>
<b>Standards of Practice Committee</b>	
<ul style="list-style-type: none"> <li>• Review and maintain standards of practice document;</li> <li>• Supervise the grievance process;</li> <li>• Resource to AOC;</li> <li>• Oversee processing of grievances</li> <li>• Initiate investigative process;</li> <li>• Review regulations and recommend the details of the procedure; and</li> <li>• Maintain and distribute disciplinary decisions.</li> </ul>	<p><b>Comm. Scott Collier, chair</b>          Comm. Aronow          Robin Balsam          John Jardine          Mike Longyear          Tom O'Brien          Lori Petersen          Winsor Schmidt</p>

<b>Public Information Committee</b>	
<ul style="list-style-type: none"> <li>• Annual reports to Supreme Court, Superior Court, and Guardians;</li> <li>• Information on website;</li> <li>• Liaison with court, legislature, DSHS, ARC, AARP, and interested agencies, etc.;</li> <li>• Newsletter to guardians; Feasibility of newsletter to CPG's; and</li> <li>• List-serve.</li> </ul>	<b>Tom O'Brien, chair</b> Mike Longyear Jerry Reilly
<b>Budget Committee</b>	
<ul style="list-style-type: none"> <li>• Develop Board budget with AOC;</li> <li>• Dues and fees; and</li> <li>• Resources, consultants, legal fees</li> </ul>	<b>Comm. Fred Aronow, chair</b> Ray Dingfield Jerry Reilly
<b>Rules Committee</b>	
<ul style="list-style-type: none"> <li>• Coordinate proposed regulation changes for consistency among all regulations.</li> <li>• Annual review of all regulations for necessary updates.</li> <li>• Provide an up-date of annual regulation changes to chair to be included in annual report to Supreme Court.</li> </ul>	<b>Comm. Fred Aronow, chair</b> Judge Vicki Hogan Comm. Scott Collier Ray Dingfield Hank Hibbard Mike Longyear Tom O'Brien Lori Petersen Jerry Reilly
<b>Ethics Committee</b>	GR 23
<ul style="list-style-type: none"> <li>• Receive and review requests for ethical opinions from Certified Professional Guardians and the Board.</li> <li>• Make recommendations to the Board concerning ethical opinions;</li> <li>• Responsible for issuance and publication of ethical opinions.</li> </ul>	<b>John Jardine, chair</b> Comm. Fred Aronow Robin Balsam Mike Longyear Winsor Schmidt

### 3. COMMITTEE REPORTS

#### 3.1. Certification Committee

On December 31, 2004, there were 231 active and 3 inactive CPGs. Certification was pending on 19 individuals. There were 39 active agencies and certification was pending on 1 agency.

A total of 148 persons/individuals have been denied certification. Of those, 2 who had been provisionally certified were denied CPG certification for cause. The certification of 83 individual and 6 agencies has been revoked. Of the individuals, 3 persons are deceased, 54 have been revoked for non payment of dues, 6 for non compliance with continuing education regulations, 1 whose inactive status expired, 2 for cause, and 42 were granted voluntary cancellation. Of the 7 agencies, 4 were revoked for non payment of dues and 3 were granted voluntary cancellation.

### 3.2. Education Committee

The Education Committee has the responsibility over the necessary education activities for the Board. This includes the mandatory initial certification training conducted twice each year as well as determining approval of the mandatory education classes to satisfy the continuing education requirements of GR 23.

Since inception, all Board members have presented at various judicial conferences as well as at the mandatory initial certification trainings. Many Board members also participate in the continuing education courses conducted by various vendors.

The Education Committee continually monitors the Board discussions to determine where other materials and training for the Board might be necessary as well as to supplement and update the mandatory initial certification training materials. The manual for the initial certification training is reviewed and revised annually.

#### 3.2.1. Mandatory Initial Certification Training

The Education Committee manages in conjunction with the approved provider, the King County Bar Association, two annual mandatory initial certification trainings, which had a total of about 120 attendees. Many of the attendees did not wish to apply to become certified professional guardians, but took the training for one reason or another. The mandatory initial certification training is a two day training and covers the basic duties, obligations and responsibilities of becoming a successful and compliant certified professional guardian, Standards of Practice, ethics and discipline.

Several problems present during each mandatory initial certification training such as how to handle persons who miss an hour or part of the training. Other problems include: individuals called to active duty; persons who have decertified and now wish to recertify; certified guardians who do not wish to comply with the mandatory training requirement, or those who believe they have done so but may not have attended pre-approved continuing education courses.

#### 3.2.2. Continuing Guardian Education

Approval by the Education Committee is given to courses offered by various vendors if the courses are in accordance with Education Regulation 201.2. In 2004, 49 courses were approved representing 45 general hours, 50.5 estate hours, 30.25 ethics hours, and 71 guardian of the person hours.

**Below are the continuing education courses approved for 2004:**

<b>Sponsor</b>	<b>Course Title</b>	<b>Course Date &amp; Location</b>
Lexie Lamborn, <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Vulnerable Adult Legislation	January 20, 2004 Burlington
Mark Sideman <a href="#">Washington State Bar Association CLE</a> 2101 Fourth Ave, 4 <sup>th</sup> Floor Seattle WA 98121-2330 206-727-8220 <a href="mailto:marks@wsba.org">marks@wsba.org</a>	New Essentials of Practicing Elder Law	January 30, 2004 Seattle
Lexie Lamborn, <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Tax Preparation Tips and Information for the Guardian	February 3, 2004 Burlington
Lexie Lamborn <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave. PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Pharmacy Concerns for Guardians	March 2, 2004 Burlington
<a href="#">King County Bar Association CLE</a> 900 4th Ave, Ste 600 Seattle WA 98164 206-340-2572	Hot Topics in Elder Law	March 19, 2004 Seattle
Lynne Fulp <a href="#">Partners in Care</a> PO Box 31149 Seattle WA 98103-1149 (206) 525-2729 <a href="mailto:lynnef@partners-in-care.org">lynnef@partners-in-care.org</a>	Comparing Investment Funds	March 24, 2004 Seattle
<a href="#">King County Bar Association CLE</a> 900 4th Ave, Ste 600 Seattle WA 98164 206-340-2572 <a href="mailto:_denisem@kcba.org">_denisem@kcba.org</a>	Co-Guardianships	March 25, 2004 Seattle
Lexie Lamborn <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave. PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Advance Directives	April 6, 2004 Burlington

<p>Rodney Jackson  <a href="#">American Society on Aging</a>  833 Market St Ste 511  San Francisco CA 94122  800-537-9728  <a href="mailto:info@asaging.org">info@asaging.org</a></p>	<p><a href="#">2004 Joint Conference of the American Society on Aging and the National Council on Aging</a></p>	<p>April 14 - 17, 2004</p>
<p>Eileen Lemke-Meconi  Fireside Forensic Services  2103 Harrison NW Ste 2  Olympia WA 98502  360-866-8981  <a href="mailto:reraven@earthlink.net">reraven@earthlink.net</a></p>	<p>Disabilities: Definitions, Challenges and Family Issues</p>	<p>April 19, 2004  Olympia</p>
<p>Eileen Lemke-Meconi  Fireside Forensic Services  2103 Harrison NW Ste 2  Olympia WA 98502  360-866-8981  <a href="mailto:reraven@earthlink.net">reraven@earthlink.net</a></p>	<p>Ethical Dilemmas for Guardians of the Estate</p>	<p>April 21, 2004  Olympia</p>
<p>Sara Myers, Director  Washington Adult Day Services Association  85 S. Washington Ste 314  Seattle, WA 98104  (206) 461-3899</p>	<p>Which Way Is Up? Working With People With Personality Disorders &amp; Families</p>	<p>April 22, 2004  Seattle</p>
<p>Ron Anderson  Kitsap County Superior Court  645 – 4th Street Ste 205  Bremerton WA 98337  360-373-1473  <a href="mailto:wallaceanderson@silverlink.net">wallaceanderson@silverlink.net</a></p>	<p>RCW 11 Guardian Ad Litem Advanced Update Training</p>	<p>April 22, 2004  Port Orchard</p>
<p>Eileen Lemke-Meconi  Fireside Forensic Services  2103 Harrison NW Ste 2  Olympia WA 98502  360-866-8981  <a href="mailto:reraven@earthlink.net">reraven@earthlink.net</a></p>	<p>Doing Business as a Guardian</p>	<p>April 29, 2004  Olympia</p>
<p>Lexie Lamborn  <a href="#">Crossroads Guardianship</a>  1004 Commercial Ave.  PMB 349  Anacortes, WA 98221  360-293-1280  <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a></p>	<p>Aging &amp; Mental Health Concerns</p>	<p>May 4, 2004  Burlington</p>
<p>Guardian Conservator Association of Oregon  PO Box 80064  Portland OR 97208-1064  503-241-6009  <a href="mailto:Emily@njdoty.com">Emily@njdoty.com</a></p>	<p>Vantage Point: Envisioning a New Fiduciary Future</p>	<p>May 6 and 7, 2004  Vancouver</p>

Mindi Blanchard Bridge Builders 720 E. Washington St STE 103 Sequim WA 98382 360-683-8334 <a href="mailto:bridgebuilders@olypen.com">bridgebuilders@olypen.com</a>	Certified Professional Guardian Continuing Education Conference	May 12, 2004 Silverdale
Sara Myers, Director Washington Adult Day Services Association 85 S. Washington, Ste 314 Seattle, WA 98104 (206) 461-3899	Best Laid Plans: Substitute Decision Making	May 12, 2004 Seattle
Roxanne Mennes <a href="#">King County Bar Association CLE</a> 900 Fourth Ave, Suite 600 Seattle WA 9816 206-340-2572	2004 Washington State Title 11 Guardianship Guardian Ad Litem Training	May 20, 2004 Seattle
Roxanne Mennes <a href="#">King County Bar Association CLE</a> 900 Fourth Ave, Suite 600 Seattle WA 9816 206-340-2572	2004 Washington State Title 11 Guardianship Guardian Ad Litem Training	May 21, 2004 Seattle
Lexie Lamborn, <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Accounting Software Useful for Guardians	June 1, 2004 Burlington
Rodney Jackson <a href="#">American Society on Aging</a> 833 Market St Ste 511 San Francisco CA 94122 800-537-9728 <a href="mailto:info@asaging.org">info@asaging.org</a>	West Coast Summer Series American Society on Aging	June 7 - 19, 2004
Sara Myers, Director Washington Adult Day Services Association 85 S. Washington, Ste 314 Seattle, WA 98104 (206) 461-3899	Basics About Alzheimer's Disease & Other Dementias	June 16, 2004 Seattle
James Christnacht Comprehensive Guardian Services 6602 – 19th St W Tacoma WA 98466 253-564-2111	Primer on Personal Care Plans and Annual Reports	June 23, 2004 Tacoma
Lexie Lamborn, Crossroads Guardianship 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Care Plans	July 6, 2004 Burlington

<p>Rodney Jackson  <a href="#">American Society on Aging</a>  833 Market St Ste 511  San Francisco CA 94122  800-537-9728  <a href="mailto:info@asaging.org">info@asaging.org</a></p>	<p>East Coast Summer Series American Society on Aging</p>	<p>July 14 - 15, 2004</p>
<p>Mark Sideman  <a href="#">Washington State Bar Association CLE</a>  2101 Fourth Ave, 4th Floor  Seattle WA 98121-2330  206-727-8220  <a href="mailto:marks@wsba.org">marks@wsba.org</a></p>	<p>Management of Special Needs Trust Seminar</p>	<p>July 14, 2004  Seattle</p>
<p>Denise Medlock  <a href="#">King County Bar Association CLE</a>  900 Fourth Ave, Suite 600  Seattle WA 98164  206-340-2578  <a href="mailto:denisem@kcba.org">denisem@kcba.org</a></p>	<p>Protecting Vulnerable Adults</p>	<p>July 21, 2004  Seattle</p>
<p>Lexie Lamborn, <a href="#">Crossroads Guardianship</a>  1004 Commercial Ave., PMB 349  Anacortes WA 98221  360-293-1280  <a href="mailto:lexie@lexielamborn">lexie@lexielamborn</a></p>	<p>Estate Inventory</p>	<p>August 3, 2004  Burlington</p>
<p>Lynne Fulp  <a href="#">Partners in Care</a>  PO Box 31149  Seattle WA 98103-1149  (206) 525-2729  <a href="mailto:lynnef@partners-in-care.org">lynnef@partners-in-care.org</a></p>	<p>Update of Adult Family Home Rules and Regulations</p>	<p>August 27, 2004  Seattle</p>
<p>Lexie Lamborn, <a href="#">Crossroads Guardianship</a>  1004 Commercial Ave., PMB 349  Anacortes WA 98221  360-293-1280  <a href="mailto:lexie@lexielamborn">lexie@lexielamborn</a></p>	<p>Annual Accountings</p>	<p>September 7, 2004  Burlington</p>
<p>Mark Sideman  Washington State Bar Association CLE  2101 Fourth Ave, 4<sup>th</sup> Fl  Seattle WA 98121-2330  1-800-945-9722  <a href="mailto:marks@wsba.org">marks@wsba.org</a></p>	<p>2004 Annual Elder Law Section Meeting and Seminar</p>	<p>September 10, 2004    Seattle</p>
<p>Sara Myers, Director  Washington Adult Day Services Association  85 S. Washington, Ste 314  Seattle, WA 98104  (206) 461-3899</p>	<p>Diabetes &amp; Older Adults: It's not Just about Sugar</p>	<p>September 22, 2004  Seattle</p>

Roxanne Mennes King County Bar Association CLE 900 Fourth Ave, Suite 600 Seattle WA 9816 206-340-2572 <a href="mailto:RoxanneM@kcba.org">RoxanneM@kcba.org</a>	Business Operations for CPGs	September 24, 2004  Seattle
Lexie Lamborn, Crossroads Guardianship 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Alternatives to Guardianship	October 5, 2004 Burlington
Lynne Fulp <a href="#">Partners in Care</a> PO Box 31149 Seattle WA 98103-1149 (206) 525-2729 <a href="mailto:lynnef@partners-in-care.org">lynnef@partners-in-care.org</a>	Standards of Practice	October 13, 2004 Seattle
Lori Petersen 1410 W. Dean Spokane WA 99201 509-838-1933	Continuing Education	October 20 and 21, 2004 Spokane
Lynnda Peterson NBI1218 McCann Drive Altona WI 54720 715-835-8525 <a href="mailto:info@nbi-sems.com">info@nbi-sems.com</a>	Planning for Convalescent Care in Washington	October 26, 2004 Seattle
Sara Myers, Director Washington Adult Day Services Association 85 S. Washington Ste 314 Seattle, WA 98104 (206) 461-3899	Leading a Horse to Water	October 28, 2004 Seattle
Sara Myers, Director Washington Adult Day Services Association 85 S. Washington Ste 314 Seattle, WA 98104 (206) 461-3899	5 Wishes: An End of Life Decision-Making Tool	November 1, 2004 Seattle
Lexie Lamborn, <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a>	Guardianship Ethics	November 2, 2004 Burlington

<p>Robin Balsam Tacoma/Pierce County Bar Association 620 Ernest S. Brazill St., Ste B Tacoma WA 98405 253-627-7605 <a href="mailto:mlawrie@cbguardianshipservices.com">mlawrie@cbguardianshipservices.com</a></p>	<p>Second Annual Pierce County Guardianship Seminar</p>	<p>November 4, 2004 Tacoma</p>
<p>Lynne Fulp <a href="#">Partners in Care</a> PO Box 31149 Seattle WA 98103-1149 (206) 525-2729 <a href="mailto:lynnef@partners-in-care.org">lynnef@partners-in-care.org</a></p>	<p>Preparing for Tax Season</p>	<p>November 10, 2004 Seattle</p>
<p>National Guardianship Association 1604 N Country Club Rd Tucson AZ 85716-3102</p>	<p>2004 NGA Annual Conference</p>	<p>November 11-14, 2004 Colorado Springs CO</p>
<p>Sara Myers, Director Washington Adult Day Services Association 85 S. Washington Ste 314 Seattle, WA 98104 (206) 461-3899</p>	<p>What Time is It?: Sleep Disturbances &amp; Dementia</p>	<p>December 6, 2004  Seattle</p>
<p>Lexie Lamborn, <a href="#">Crossroads Guardianship</a> 1004 Commercial Ave., PMB 349 Anacortes, WA 98221 360-293-1280 <a href="mailto:lexie@lexielamborn.com">lexie@lexielamborn.com</a></p>	<p>Ethics of End of Life &amp; Hospice</p>	<p>December 7, 2004 Burlington</p>
<p>Kit Kasner Tacoma/Pierce County Bar Association 620 Ernest S. Brazill St., Ste B Tacoma WA 98405 253-272-8871 <a href="mailto:mlawrie@cbguardianshipservices.com">mlawrie@cbguardianshipservices.com</a></p>	<p>Competency, Capacity, Insanity, the Medical Profession's Look Into Evaluating Your Client</p>	<p>December 10, 2004 Tacoma</p>
<p>Lynnda Peterson NBI1218 McCann Drive Altona WI 54720 715-835-8525 <a href="mailto:info@nbi-sems.com">info@nbi-sems.com</a></p>	<p>Estate, Financial, &amp; Health Care Planning for Elder Clients in WA</p>	<p>December 14, 2004 Seattle</p>
<p>Anita Quirk, Attorney at Law P.O. Box 2463 Longview, WA 98632 <a href="mailto:quirk@unfranchise.com">quirk@unfranchise.com</a></p>	<p>Working With Your Ward's Estate And Desires</p>	<p>December 17, 2004 Kelso</p>

### 3.3. Rules Committee

The Board formed the Rules Committee in 2004 in order to coordinate apparent or potential conflicts between the various regulations adopted by the Board. In addition, the Rules Committee will monitor and review those areas where standing committee efforts may overlap or even directly conflict so as to provide consistency. The Rules Committee may also identify and recommend new or amended regulations, forms, publications, or changes in committee responsibilities to the Chair of the Board or the Board in order to clarify existing regulations. Such an example would be to smooth out a change in CPG certification requirements and coordinating that change with the Standards of Practice Committee, Certification and Education standing committees to provide consistency.

#### 3.3.1. General Rule 23

The Supreme Court adopted changes to GR 23(e), effective September 1, 2004, relating to disclosures by professional guardians of adverse rulings, adjudications and removals.

#### 3.3.2. Certification Regulation Changes:

Amended Regulation 103.2.5 to permit a certificate of completion of the mandatory certification training to be valid for one year rather than two years.

Deleted Regulation 103.3.6 and added Regulation 120 governing circumstances in which Certified Guardian Agencies are not in compliance with the requirement that there be two Certified Professional Guardians within the Agency.

Amended Regulation 111.8 to clarify that the sanction for failure to file the required annual declaration is de-certification, and to clarify administrative provisions for notice and appeal of such decertification.

Adopted Regulation 119 enforcing GR 23 (e) relating to disclosures of adverse rulings, adjudications, or removals.

Amended Regulation 205.5 requiring all materials distributed at continuing education courses be submitted to the Board.

Amended Regulation 211 to clarify sanctions for failure to obtain required continuing education credits and to provide an appeals process for actions taken under the rule.

Amended Regulation 212 to clarify requirements for Certified Professional Guardians who wish to convert from inactive to active status.

Amended Regulations 513.1 to 513.4 to clarify what information about a discipline matter will be available to the public regarding settlement agreements, thus increasing the exposure to the public record.

Amended Regulation 514.1.4 to provide for letters of admonishment in discipline matters.

Amended Regulation 514.2.2 to provide the alternative of suspension from taking new cases as a sanction available in discipline matters.

A new Regulation 600 was adopted that created notice requirements and a comment period for changes to the Board's Regulations.

### 3.4. Standards of Practice Committee

There were 14 new grievances considered by the Standards of Practice Committee during 2004.

#### 3.4.1. Discipline Matters

Some of the grievances considered by the Board during 2004 involved consideration of actions by Certified Professional Guardians which occurred prior to the adoption of GR 23 and the Certification Regulations. The Board felt pre-certification conduct could be used as the basis to conduct a disciplinary investigation to determine if there are problems with the guardian's conduct post-certification; but that imposition of discipline solely on the basis of pre-certification actions is not appropriate.

The Board addressed the following discipline matters during 2004:

2002-02 The SOPC recommended and the Board agreed to send a letter of admonishment to Thomas P. Robinson, CPG #4756, and Robinson Guardian Services, CPGA #5788, pursuant to a Disciplinary Agreement. The grievance related to a previously dismissed grievance 2003-06 because the facts underlying that grievance were considered as part of this grievance.

2002-04 This was a re-filing of a grievance previously dismissed by the SOPC. The grievant did not feel the issues were adequately addressed. The SOPC reviewed the original grievance, the original decision, and the October 13, 2003 re-filing. It was the decision of the SOPC not to reopen the case. The issues in this case involved the fees charged by the CPG. The SOPC dismissed the grievance because the fees had been reviewed and approved by the superior court which had jurisdiction over the guardianship.

2003-02 A Settlement Agreement was entered into in between Judith Y. Williams, CPG #4760, Northwest Guardianship Services and the Guardian Board.

2003-09 The Board became aware of an unpublished decision from the Court of Appeals concerning the conduct of a CPG. A Review Panel was appointed to investigate this matter. Sheila Brashear, CPG #4729, and the agency, Charge d' Affaires, CPGA #5129, entered into a Settlement Agreement with the Board in which they received a Letter of Admonition from the Board, and they agreed to comply with all statutes and court orders related to their guardianship cases, to maintain an office calendar to assist them in meeting all court-related filing deadlines, and to immediately self-report any violations of the Standards of Practice or adverse court orders or findings issued against them.

2003-011 Grievances were received against Dale Frederickson, CPG #5184, and Guardianship Services of Eastern Washington (GSEW), CPGA #5136. A Settlement Agreement was reached. Based on the then-current version of the Disciplinary Regulations, the facts underlying the Settlement Agreement are confidential. Mr. Frederickson and GSEW agreed to have a third-party manage the agency, to limit the geographic scope of their practice, to have counsel represent them in all legal proceedings, to have training presented by persons other than GSEW employees, to attend further guardianship training, to maintain monthly time records for all clients and present those to the court when requesting fees, to have the new agency manager make periodic reports to the court on the status of the caseload of the agency, including compliance with all statutes and court orders, self-reporting to the Board of any delinquencies in those obligations, and payment of the costs of the Board's investigation.

2003-013 A grievance was made by a former incapacitated person alleging the CPG did not return money when the guardianship was terminated by the court. The CPG provided documentation to the SOPC showing how the money was spent on the incapacitated person's personal care during the guardianship, all approved by the superior court with jurisdiction over the guardianship. The SOPC dismissed the grievance.

2003-014 This grievance pertained to an active case. The SOPC referred the grievance to the superior court with jurisdiction over the guardianship. The court investigated and reported that the CPG was in compliance with all of its obligations on the case. The SOPC dismissed the grievance.

2004-01 The Board received information suggesting that a CPG had misstated information in the application for certification. A review panel was appointed. The matter was closed when the complained against CPG died shortly after the filing of the grievance.

2004-02 The Board received a copy of an order from King County Superior Court removing a CPG from all of the guardianship cases to which the CPG has been appointed. Removal was on the basis that the CPG had failed in a number of ways to comply with the requirements of guardianship laws and specific orders of the court. A Review Panel was appointed which secured an agreement with the CPG. The agreement provided, upon verification that the CPG had no cases in other counties or other non-guardianship fiduciary work, that the CPG would accept no new cases. The review panel negotiated a Settlement Agreement in which the CPG stipulated to certain facts and agreed that the CPG certification would be revoked. The agreement was never signed by the CPG. The CPG was subsequently decertified for failure to obtain continuing education credit and the matter was closed.

2004-03 A grievance was received from a friend of an incapacitated person alleging that the CPG had failed to provide appropriate care and services. As the matter was the subject of an active case, it was referred to the superior court with jurisdiction over the guardianship. The court responded and informed the Board that the court had investigated the matter and found no basis for any further action. The grievance was dismissed by the SOPC.

2004-04 A guardian agency disclosed to King County Superior Court that money had been transferred from fiduciary client accounts to pay agency expenses by an employee of the agency. The court directed copies of the materials it had received to the Board. A Review Panel was appointed and is currently investigating this matter. The superior court is also currently investigating this matter.

2004-05 The Board was informed that a CPG, who is also an attorney, had been admonished by the Washington State Bar Association for certain conduct but who had not disclosed this disciplinary matter to the AOC as required by GR 23. The review panel will recommend a Settlement Agreement to the Board at the March 2005 meeting.

2004-06 The Board received a grievance alleging that the CPG had conflicts of interest and had mismanaged assets of the guardianship. As the matter was the subject of an active case, it was referred to the superior court with jurisdiction over the guardianship. The court responded and stated that although there was a basis for concern, the court lacked the resources to fully investigate the matter and asked the Board to do so. The Board declined, but did provide specific suggestions to the superior court as to how to proceed. The superior court is currently investigating this matter.

2004-07 The Board received a grievance against a CPG for mismanagement of the person and estate of an incapacitated person. There had also been a grievance to the superior court. The CPG had voluntarily resigned, and a new guardian appointed. The court entered no findings against the CPG for alleged misconduct, and approved the reports and accountings filed by the CPG. The SOPC dismissed the grievance.

2004-08 The Board received a grievance from Adult Protective Services against a CPG on an active case. The grievance was referred to the superior court with jurisdiction over the guardianship. The SOPC is waiting for a report back from the superior court.

2004-09 The Board received a grievance that a CPG was not a certified professional guardian at the time of appointment. The SOPC felt the Board's records did not support a finding against the guardian. The grievance was dismissed.

2004-010 The Board received a grievance alleging improper pre-appointment marshalling of assets by a person awaiting court appointment as a guardian. The SOPC found that the person had legal authority for the actions taken although no Order Appointing Guardian had been entered by the superior court. Further, the superior court had been made aware of this conduct at the time of appointment and had not made any findings of misconduct and had appointed this person as guardian. The SOPC requested that the Board's Ethics Committee consider an Ethics Advisory Opinion on the subject of pre-appointment marshalling of assets by guardians.

2004-011 The facts underlying this grievance were the same as a previous grievance filed against the same guardian by the same grievant. The SOPC dismissed this grievance.

2004-012 A grievance was received alleging a CPG is mismanaging the estate and mistreating the incapacitated person. The grievance has been referred to the superior court with jurisdiction over the guardianship for investigation and to make a report back to the SOPC.

2004-013 A grievance was received alleging a CPG is mismanaging the estate of an incapacitated person and that the CPG never filed an inventory or personal care plan for the incapacitated person. The SOPC referred the grievance to the superior court with jurisdiction over the guardianship for investigation and report. Because this guardian is already under the ongoing supervision of the Board as a result of a Settlement Agreement, a review panel has been appointed to investigate this matter for the Board.

2004-014 A grievance was received alleging that a superior court has appointed a person as a guardian in more than two cases, for fees, when the person is not a certified professional guardian under GR 23. This matter is pending review by the SOPC.

### 3.5. Ethics Committee

The Ethics Committee membership consists of individuals representing a balanced community perspective on the practice of guardianship. Two of the members are actively practicing certified professional guardians, two are attorneys with a practice focus on guardianship and elder law issues, one member is a sitting court commissioner in Spokane County, and one member is an academic/attorney at the university level with a long-standing active involvement in guardianship and elder law issues on a national level. Geographically, the committee membership consists of three individuals with a practice focus in King County, one has a practice focus in Pierce County, and two members maintain a professional practice and reside in Spokane County.

The Ethics Committee is currently addressing four issues:

- a) Develop an ethics opinion or best practice recommendation as to the advisability of the necessity of bonding by certified professional guardians. Specifically, whether a certified professional guardian should seek the placement of a court-ordered bond for every appointment regardless of the size of the guardianship estate.
- b) Develop an ethics opinion or best practice recommendation with regard to the office practices of certified professional guardians as those practices relate to the supervision of employees not certified as professional guardians, with particular focus on those employees who handle and/or manage client funds.
- c) Develop an ethics opinion or best practice recommendation which identifies the ethical obligations of a certified professional guardian when that guardian is asked to marshal the assets of an alleged incapacitated person before the guardian has been appointed to serve by the court.
- d) Develop an ethics opinion or best practice recommendation with regard to the minimum financial solvency level and/or insurance that is maintained by a certified professional guardian.

The Ethics Committee expects to begin circulating draft opinions on these issues in early Spring 2005. Final resolution of the issues is expected by the time of the presentation of the next Annual Report to the Supreme Court.

In 2004 the Ethics Committee completed and published Ethics Advisory Opinion: #2002-03: Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners. The opinion sets out the potential conflicts of interest when a GPG is appointed guardian for a husband and wife. The opinion gives guidelines for when such appointments should be avoided and how to manage such work when appointments are accepted. See *Appendix A* attached.

#### 4. SPECIAL AND FUTURE ISSUES

4.1. Board Chair, Judge Vicki L. Hogan, wrote to the Supreme Court advocating exclusion of guardianship records from GR 31 disclosure requirements due to the highly confidential nature of these filings.

4.2. GR 15 and GR 22 were discussed considering the significant issues and problems associated with putting guardianship court files on the Internet to an incapacitated person. A Board representative was appointed to a court workgroup considering changes to GR 15 and GR 22.

4.3. The Certification Board took notice of the Washington Supreme Court's findings in the matter of *City of Redmond v. Moore* and adjusted its procedures such that CPGs affected by specific board actions are assured an opportunity to contest actions of the Board on the basis of administrative error.

4.4. The Rules Committee was created.

4.5. The Board initiated revision of SCOMIS records such that the names of appointed CPGs and CPG Agencies are more easily searchable.

4.6. Board Chair, Judge Vicki L. Hogan, and Standards of Practice Committee Chair, Commissioner Scott Collier, met with the Supreme Court Rules Committee in October 2004.

4.7. The Board continues to be concerned about an annual adequate source of funds to meet the expenses of a lengthy contested grievance hearing.

## Appendix A

### CERTIFIED PROFESSIONAL GUARDIAN BOARD ETHICS ADVISORY OPINION #2002-03

#### **Ethics Advisory Opinion: #2002-03: Simultaneous Appointment as Guardian for Both Spouses or Domestic Partners**

**Date Approved by the Certified Professional Guardian Board: April 12, 2004**  
**Statement of Questions Posed:**

1. May a Certified Professional Guardian or Agency (Guardian) be appointed to provide concurrent, dual or joint representation on behalf of both spouses, domestic partners or persons living in a meretricious relationship? If so, under what circumstances is this appropriate?
2. What criteria should a Guardian apply in determining whether the Guardian should accept a dual appointment; or if already appointed, should the Guardian continue to act on behalf of both persons in a relationship as described above?
3. What procedural steps ought to be followed if the Guardian believes that dual representation is appropriate under the facts of the case, or in order to continue serving when in such a relationship and an actual, apparent or potential conflict of interest arises?

**Summary of Opinion:** The appointment of the same Guardian to act simultaneously in the best interests of both spouses in a marital relationship, domestic partners, or persons in a meretricious relationship presents, at a minimum, the appearance of a potential conflict of interest, and *should only be done with great caution by a Guardian*. Even if the parties are not married, appellate case decisions have implied and applied certain community property principles to such relationships and legal presumptions may apply. The issues are complex and the circumstances dynamic. Often, actual conflicts may not become apparent until it is too late to seek instruction from the court or for the Guardian to take remedial action. The advice of counsel should be sought prior to accepting such an appointment.

While a court may consider a well supported petition for a dual Guardian, endorsed by the Guardian ad Litem for one or each of the alleged incapacitated persons, the circumstances upon which the decision was based could change quickly or unknowingly and present a conflict of interest necessitating the removal of the dual guardian from both cases and two new independent Guardians being appointed. The latter action would foreseeably result in significant additional costs to the estate of the incapacitated person and potentially to the retiring Guardian as well. Only in well-justified cases and after a hearing supported by recommendations of the Guardians Ad Litem for each of the alleged incapacitated persons, and assurance that there would be only *de minimus* conflicts should a Guardian accept such an appointment.



## **ANALYSIS:**

A guardian, in any case, has a fiduciary duty to the adjudicated incapacitated person (IP) to manage the personal affairs and/or estate of the IP for the benefit of the IP. On its face, an appointment of a guardian for both spouses creates a divided loyalty in the duties of the guardian in that he/she must manage the community and separate estates of both IPs for their individual benefit. While such an arrangement may potentially or financially benefit both spouses or partners, the appearance of potential conflict, and the likelihood of an eventual conflict of interest is substantial.

The court, at any hearing to appoint a single guardian for a married couple or for domestic partners, will likely view the petition with concern. The reason for the court's skepticism is that in any guardianship appointment, the court is delegating its duty and authority to oversee the personal and financial matters of individual, vulnerable incapacitated persons to a guardian. Lawyers, judges, and court commissioners are by training and experience, highly sensitized to conflict of interest situations and to the appearance of such conflicts.

At the hearing on the petition, the court will review the guardian ad litem (GAL) report and the petition. It will ensure that full disclosure of all known conflicts has occurred and that consents/waivers have been addressed as appropriate. The court will engage the parties named above in a discussion on the record to ensure that all interests are identified and balanced. As in nearly all guardianship hearings, the court will weigh the GAL's report and recommendations on all issues, including the appropriateness of the proposed guardian. While the issues will be similar to those conflict issues arising as to spouses, domestic partners will not necessarily have the same legal presumptions afforded married couples. A Guardian should obtain the advice of counsel when considering these issues prior to accepting such an appointment.

Below is a **nonexclusive** list of examples and circumstances that present an appearance of potential or actual conflicts of interest for a guardian considering such an appointment.

- 1) One or both spouses or partners having children from prior relationships.
- 2) Lack of stability and length of the marriage/relationship.
- 3) The presence of or lack of an estate plan made by the couple while both members were still competent.
- 4) Separate property owned by the spouses or partners or the expectancy of inheritance by either.
- 5) Presence or lack of a community property or other written agreement or of a marital relationship.

- 6) Eligibility for benefits, such as Medicaid and spend-down/gifting issues.
- 7) Residential decisions and the source of funds to pay home mortgage and upkeep costs, assisted living, or long term care costs.
- 8) Guardian billing and accountings submitted to the court.
- 9) End-of-life decisions in the absence of competently and jointly executed health care directives.

**Nonexclusive** examples of circumstances where the court may consider a single guardian for a couple may be when:

- 1) There is a competently and mutually executed pre-guardianship estate plan that contemplates the eventual incapacity of one or both spouses or partners that provides resolution to possible conflicts.
- 2) There is a long-term marriage with both spouses or partners in a care facility and the parties have little or no estate and have competently executed health care directives.

Again, remember that the issues for married couples will likely differ in some respects from those of domestic partners due primarily to the existence of a marital relationship.

In any circumstances where the same guardian serves both spouses or partners, there is always the possibility of a conflict going unrealized until it is too late and something like the death of one of the spouses obviates the issue. Such circumstances can place the guardian and the incapacitated persons in an unworkable situation ethically and practically, often resulting in expensive litigation naming the guardian personally as a defendant or other party.

The guardian in any case should not wait after sensing a possible conflict of interest. Counsel should be consulted immediately and a filed request for instructions from the court can assist in identifying, disclosing, and resolving conflict of interest issues at a hearing with all concerned parties present. Such issues will be decided on a case-by-case basis, and the guardian's vigilance and anticipation of potential conflicts will be expected by the court.

## APPENDIX A-1

### References:

*Estate of Sullivan v Brashear*, 2003 Wn.App. LEXIS 509 (March 31, 2003),  
(Unpublished opinion, Petition for Review filed November 10, 2003.)

*In re Mignerey*, 11 Wn.2d 42, 118 P.2d 440 (1941.)

*In re Denisson*, 197 Wash. 265, 84 P.2d 1024 (1938.)

Chapter 11.88, Revised Code of Washington

Chapter 11.92, Revised Code of Washington

Rules of Professional Conduct (for attorneys), RPC 1.7

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American College of Trust and Estate Counsel, *Engagement Letters: A Guide for  
Practitioners Conduct* (March 1999)

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National Guardianship Association, [www.guardianship.org](http://www.guardianship.org) (2003)

Moore, Nancy J., *Conflicts of Interest in the Representation of Children*, 64 Fordham L.  
Rev. 1819 (1996)

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Treacy Jr., Gerald B., *Washington Guardianship Law Summary, Summary of  
Washington Guardianship Decisions* (treatise of LEXIS 2002)

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Stetson Law Review 595-609 (2002)



## **APPENDIX A-2**

### **400 Standards of Practice:**

401. GENERAL A guardian shall exercise care and diligence when making a decision on behalf of an Incapacitated Person (IP). The civil rights and liberties of the IP shall be protected. The independence and self-reliance of the IP shall be maximized to the greatest extent consistent with their protection and safety.

401.5 The guardian shall protect the personal and economic interests of the IP and foster growth, independence, and self-reliance.

401.7 Whenever feasible a guardian shall consult with the IP, and shall treat with respect, the feelings, values, and opinions of the IP. Wherever possible, the guardian shall acknowledge the residual capacity of the IP to participate in or make some decisions.

401.8 When the guardian has limited authority, the guardian shall work cooperatively with the IP or with others who have authority in other areas for the benefit of the IP.

401.9 The guardian shall cooperate with and carefully consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the IP.

401.12 When possible, the guardian will defer to an IP's autonomous capacity to make decisions.

### **402 Decision Standards:**

All decisions and activities of the guardian shall be made according to the applicable decision standard.

402.1 The primary standard is the Substituted Judgment Standard. This means that the guardian shall make reasonable efforts to ascertain the IP's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the IP.

402.2 When the competent preferences of an IP cannot be ascertained, the guardian is responsible for making decisions which are in the best interest of the IP. A determination of the best interest of the IP shall include consideration of the stated preferences of the IP.

#### 403 Ethics:

403.8 The guardian shall protect the IP's rights and best interests against infringement by third parties.

#### 406 Financial Management:

406.3 The guardian shall manage the estate with the primary goal of providing for the needs of the IP.

406.4 In certain cases, the guardian shall consider the needs of the IP's dependents for support or maintenance, provided appropriate authority for such support is obtained in advance. The wishes of the IP, as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the IP and the advantages and disadvantages to the IP of such support or maintenance.

406.8 When it is likely that the IP's estate will be exhausted, the guardian shall, as appropriate, make plans and take necessary steps to acquire public benefits on behalf of the IP. When implementing necessary changes in the IP's lifestyle, the guardian shall seek to minimize the stress of any transition.