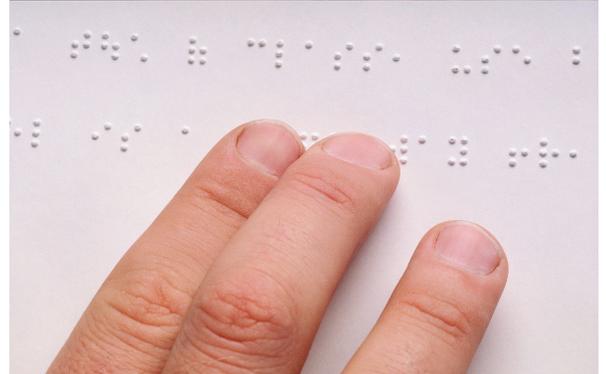




WASHINGTON  
COURTS

# Certified Professional Guardian Board



2009 Annual Report



## BOARD MISSION

*The Certified Professional Guardian Board, a Board established by the Supreme Court, regulates the certification of professional guardians, including the selection, education, and discipline of those guardians. The Board will continue to be a national leader in the certification process and the regulation of guardians, and will continue to hold prospective and current guardians to high standards.*

# ABOUT THE BOARD

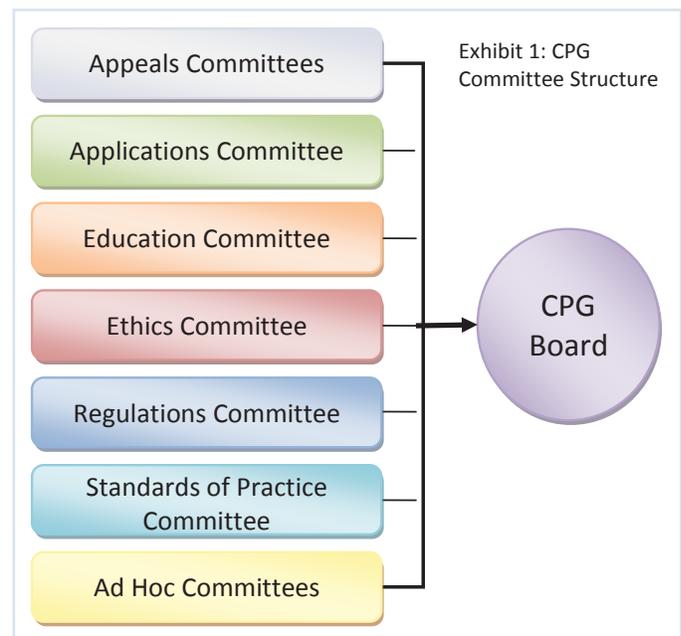
## THE BOARD'S DUTIES INCLUDE:

- Reviewing applicants for certification by the Supreme Court;
- Adopting and ensuring compliance with Standards of Practice, available at: [http://www.courts.wa.gov/committee/?fa=committee.child&child\\_id=30&committee\\_id=117](http://www.courts.wa.gov/committee/?fa=committee.child&child_id=30&committee_id=117);
- Reviewing and investigating grievances, holding disciplinary hearings, and imposing disciplinary sanctions;
- Implementing and approving mandatory training both for initial certification and as a requirement to maintain certification; and
- Adopting Ethics Advisory Opinions to guide professional guardians in their practice.

## BOARD MAKE UP

The Washington State Supreme Court appoints the Board chair and members.

The Board includes representatives from the following areas of expertise: professional guardians, attorneys, guardian advocates, courts, state agencies, and those employed in medical, social, health, financial or other fields pertinent to guardianships. Currently, the Board has 14 members—four professional guardians, (two of whom are also guardianship attorneys), five judicial officers, one attorney from the Department of Social and Health Services, two professors (one a board certified nurse and the other an attorney), one member from the Arc, and one member from the Alzheimer's Association. The Board operates via a committee structure depicted in Exhibit 1.



## CHAIR REPORT

In 2009, the Board made major strides in all areas of regulation—selection, education, and discipline of certified professional guardians. The Board improved the process by which the Board reviewed an applicant's qualifications, supported the improvement of the mandatory training of professional guardians, implemented an audit of guardian's reports to the court, and began a review of the Standards of Practice. It was a very active year.

## Among the Board's Achievements:

- At the Board's annual retreat, the Board developed regulations regarding the type of experience necessary to become a certified professional guardian. The Board also made recommendations to the Supreme Court to change language in GR 23 to reflect the concept of "transferable skills", that is, professional experience in other areas of practice that applies to the practice of guardianship. The Board also recommended allowing applicants with higher level degrees, a Masters, J.D., Ph.D., or equivalent advanced degree, to have one year of experience instead of two. The Supreme Court accepted the Board's recommendations and they were effective September 1, 2010.
- The Board continued to supervise the mandatory training of guardians through the University of Washington Educational Outreach (UWEO) Program. The initial course that began in September 2008 was significantly restructured for the third iteration of the course held in September 2009.
- The Board, after careful consideration of the implementation of an audit of the timeliness of certain guardian reports, began the audit in July 2009. Data gathered during the implementation stage showed that of approximately 20,000 guardianship appointments statewide, 3400 cases are managed by certified professional guardians.
- The Regulations Committee began a systematic review and re-organization of the Standards of Conduct, the minimum standards of conduct for all certified professional guardians.
- The Board included a "CPG Practice Experience" session as part of the in-person meetings in which a certified professional guardian shared a story about his or her work and impact on the life of an incapacitated person. One such story is included in this report.
- The Board also reviewed its goals for 2009 at every meeting to measure progress and accountability.

## The Board has set ambitious goals for 2010, including:

- Improve and refine the University of Washington Educational Outreach Guardianship Certificate Program.
- Develop the core competencies of a successful guardian, and consider whether testing should be part of the certification process.
- Review the Disciplinary Regulation 520 audit results and consider whether other types of monitoring are needed.
- Ensure quality continuing education is available in areas of need.
- Finalize the re-organization and revision of the Standards of Practice.
- Seek to increase diversity of the Board and certified professional guardians.

### *Certified Professional Guardian Practice Experience: A Veteran Honored*

*One of my first appointments nearly ten years ago was a gentleman in a medically induced coma with no chance of recovery from a major stroke. The hospital wanted someone to make a decision about life support. Having recently completed Guardian training I was keenly aware of the substituted judgment and best interest standards for medical decisions.*

*My new client had been estranged from his wife and son for nearly 40 years, both of whom lived out of state. I was able to contact them both to learn what he would want for his end of life decisions. He was described essentially as a fighter and who would want every chance to stay alive. So that is what we did: full code with all life support retained. We advised the court and also received permission to change from full code if the situation warranted.*

*Over the next few weeks his heart stopped a couple of times and then one day it stopped once and they resuscitated him, twenty minutes later it stopped again and they resuscitated him and called me. They described the situation and asked for permission to not resuscitate if it stopped again. I made the decision that he was telling us that he was ready to move on to his next life.*

*As all Guardians try to do in their first 90 days of appointment, I tried to muster all of his assets. They were limited to a couple of uncashed pay checks and some belongings. The latter took an order to show cause against the landlord to look through them and the Court Commissioner chastising the landlord to let the Guardian do his job. We did not find much that was useful and nothing of great monetary value. A driver's license was the main thing. I had been told by his family that he was a veteran but there was no DD 214.*

*Cremation was approved by the family and his ashes were ready for inurnment in the Veteran's Cemetery. But they would not take him without proof. From his estranged wife, I had the approximate dates of service and branch of service, but he was of the generation of veterans who were given service numbers and not matched to Social Security Numbers because a fire destroyed thousands of veteran records. The work began.*

*The local VA field investigator could not help without the DD 214 or a service number. My next contact was a congressman's office. They had done this for other veterans so they began the process of securing veteran status. Several months later, I was in Riverside, California and the Veteran's Cemetery for my mother's inurnment and made contact with a clerk there who had received the Congressional request. In a quick conversation, I introduced myself and told her what I was there for and she said she could have the information in a couple of days. And she did.*

*With confirmation of veteran status, the Veteran's Cemetery accepted my client. We planned a service. It is always great to have family at these services but the only one who could come was the estranged son. My client had a couple of friends from work who wanted to come to the service and they were invited. The day of the service we were gathering in the line to go to the service. I was visiting with my client's friends who were also veterans, who had never met his son, when a yellow Volkswagen drove up. Knowing that my client's son was a county sheriff in another state, I turned around to continue the conversation. My client's friends stopped talking and just looked behind me whispering "he looks just like his father".*

*We all greeted each other and I pulled out the driver's license and gave it to his son. His wife looked over his shoulder wanting to know what he would look like when he was older. It was the only picture he had of his father. We all went to the service and the son held his father's drivers license in his hand through the entire service just looking at it. The American flag was presented to the son as is traditional in veteran services. After the service, the son gave the flag to one of my client's friends who said he would fly it regularly to honor his father.*

*What did I get from many hours of work? A great deal of satisfaction that a veteran had been properly honored and at least in death reconnected to family and friends.*

*Ken and Sylvia Curry are the designated guardians of Your Advocates, Inc., a Certified Professional Guardian Agency.*

The Board takes seriously its commitment to ensuring that well-qualified and well-trained certified professional guardians are available throughout the state. Like all regulatory agencies, the Board is called upon to balance protection of the public against the additional cost of regulation.

The Board looks forward to meeting the challenges and ensuring that Washington State continues to remain a leader in the nation in terms of guardian selection, training, and discipline.

CPG Statistics

In 2009, there were approximately 237 Certified Professional Guardians (CPGs) and 41 CPG Agencies. A CPG Agency is made up of at least two CPGs who each have authority to make decisions for incapacitated persons on behalf of the Agency. The CPGs and CPG Agencies were appointed as guardians in approximately 3400 cases, out of the approximately 20,000 guardianship cases in Washington State.

In 2009, 23 CPGs surrendered their certification (See Exhibit 2). CPGs are not required to provide a reason for the surrender of certification, but retirement is a common reason. Three CPGs went on inactive status. A CPG on inactive status may not be appointed in more than two cases for pay without re-activating his or her certification. One CPG was decertified for failure to pay annual dues. Each CPG must pay annual dues of \$150.00. Two CPGs were decertified for failure to take continuing education classes. Each CPG must take 12 continuing education credits per year. A guardian who has been decertified may not be appointed as a professional guardian. Notice of decertification is sent to all Superior Court judicial officers, Clerks, and Court Administrators.

**Exhibit 2: 2009 Certification Statistics**

Certified Professional Guardians	237
Certified Professional Guardian Agencies	41
Voluntary Surrenders of Certification	23
Requests to become inactive	3
Decertification for failure to pay dues	1
Decertification for failure to take continuing education classes	2

# COMMITTEE REPORTS

## APPLICATIONS COMMITTEE

The Applications Committee meets monthly to review applications for professional guardian certification and to make recommendations to the Board. As part of its review of an applicant, the Applications Committee reviews the work experience, the educational background, and any other licensing or regulatory findings. The regulations governing the type of work experience needed underwent a change in 2009 (see Ad Hoc Committee section below) and were broadened to allow skills or experience that was transferable to the provision of guardianship services. An applicant must have a minimum of an Associates of Arts degree and 4 years of experience. The status of other professional licenses held by applicants is verified and state and national background checks are performed by the Washington State Patrol and the FBI.

In 2009, 35 applications for certification were considered, 23 were granted certification, and 12 were denied. Of those who were denied, ten appealed and seven of them were successful.

### ***A Certified Professional Guardian's View of the New Mandatory Training***

*I took the two day training in March 2007 and applied to the Certified Professional Guardian Board. I was certified in July 2007. Needless to say, the two day training did nothing to prepare me for what lay ahead. Being a guardian is an on the job training and trial by fire. No one guardianship is the same and guardianship cannot be managed or administered as a one size fits all proposition. The Washington guardianship community is very supportive and willing to mentor new guardians, and I had the pleasure of aligning myself with several veteran guardians who provided assistance and support through my initial cases.*

*Shortly after I became a CPG, the two day training was discontinued and replaced with the University of Washington Guardianship Certificate Program. The program consisted of three courses; Guardianship of the Person, Guardianship of the Estate and Guardianship Ethics, Constructive Problem Solving & Business Operations with each course consisting of 30 contact hours plus about 30 hours for homework, reading and study.*

*The first class started September of 2008 and I was one of over 30 students enrolled in the courses. The class had a few challenges requiring flexibility of the instructors and students; not that different than the flexibility required by guardian. The class presented guardianship statutes and theory using practical applications to case studies. The Certificate Program was an educational experience that further developed legal, medical, financial, and social perspectives, as well as, skills in empathy, advocacy, and well-reasoned decision-making that are critical in the role of a Professional Guardian.*

*I have had the unique privilege of "quasi" auditing the third iteration of the online portion of the University of Washington Certificate Program because my husband attended the training. The class was smaller and the information was formatted differently than when the program was first started. The information has been adjusted and fine tuned—it is presented in a more practical and useful manner.*

*As a newer CPG, it is exciting to see the advances in the education process and the overall redefining of Guardianship in the state of Washington. I am honored to be in what I feel is the most rewarding career field. The one thing that has affected me the greatest is a quote from Jay Wolfson, Dr. P.H., J.D., the Guardian Ad Litem for Theresa Marie Schiavo. "Sometimes good law is not enough, good medicine is not enough, and all too often, good intentions do not suffice. Sometimes, the answer is in the process, not the presumed outcome. We must be left with hope that the right thing will be done well."*

*Loralee McDonell-Williams is a Certified Professional Guardian and Public Guardian of Pierce County. Her husband, Albert "Doc" Williams is also a Certified Professional Guardian and Public Guardian of Pierce County.*

## EDUCATION COMMITTEE

The Education Committee oversees the initial mandatory training to become a certified professional guardian and the continuing education classes that each guardian must take to remain certified. The Committee meets at least quarterly.

The Committee proposed the following regulation changes in 2009:

- Regulation 103.2.5 extended the validity of the certificate for completion of the mandatory training conducted by the University of Washington Educational Outreach Program from one to two years.
- Regulation 205.2 allows a guardian to request retroactive approval for continuing education classes attended that had not already been awarded approval for credit. The guardian has to apply within 30 days and pay a fee.

The Committee reviewed Administrative Office of the Courts (AOC) staff determinations regarding credit awarded to classes. In 2009, there were 47 classes, some covering multiple days for a total of nearly 200 credit hours.<sup>1</sup>

Each certified professional guardian must attend 12 hours of continuing education per year and obtain credits as follows:

- 4 person—the course or subject must encompass training and information pertaining to personal care, physical care, residential placement, care management, medical, psychological, social, and family matters and other issues with which a Guardian of the Person should be familiar.
- 4 estate—the course or subject must encompass training and information about the marshalling, management and sale of assets; responsibility for maintenance and protection of assets; entitlement to federal, state, and other financial benefits; estate planning, including gifting and transfers of assets; and other financial activities with which a Guardian of the Estate should be familiar.
- 2 general—the course or subject must encompass training and information pertaining to the business side of a Guardian’s practice, including the use of forms to assist in the practice, tax and civil liability, insurance and bond issues, relationship with counsel and other professionals, fee issues and billing practices, and business development. It also includes matters that apply generally to guardianship of person and estate, such as the roles of guardians ad litem, petitions for direction, general civil procedure, or the role of the court.
- 2 ethics—the course or subject must deal with the ethical issues and ethical conflicts relative to the legal rights, duties, or responsibilities of Guardians.

The University of Washington Educational Outreach (UWEO) Program is in the second year of its three-year contract to provide the mandatory training for certified professional guardians. The classes run for a six-month period and are a combination of 56 hours of in-person class time and 44 hours of online learning for a total of 100 contact hours. The instructors are drawn from the University of Washington, certified professional guardians, advocates, and other professionals.

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<sup>1</sup> For more details about classes, please see Appendix D

First two iterations

Guardianship of the Person

Guardianship of the Estate

Guardianship Ethics, Constructive Problem Solving and Business Operations

Fall 2009

Guardianship Law, Concepts, and Practice

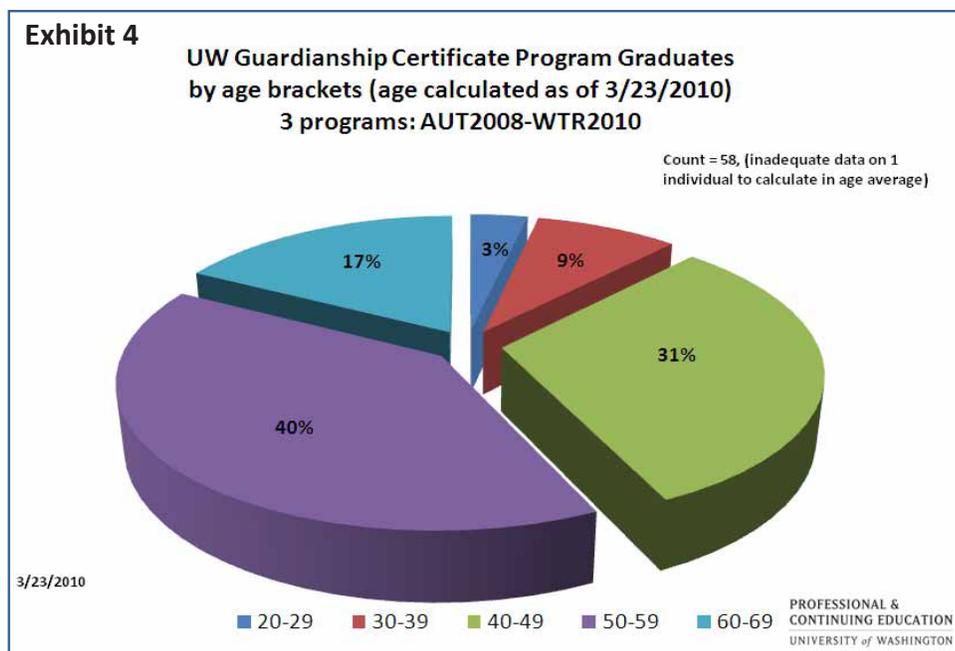
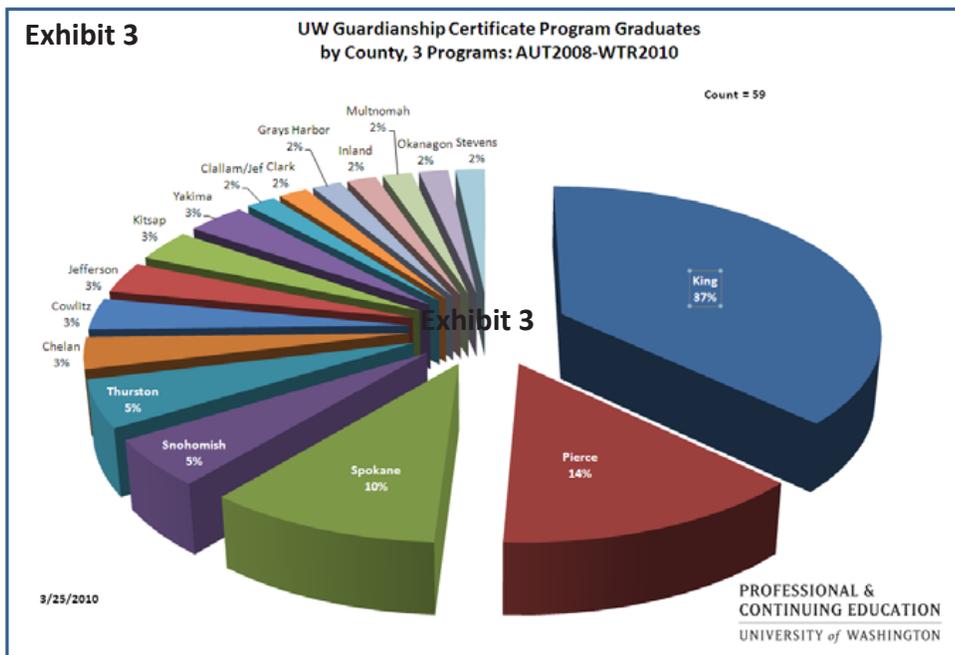
Guardianship Roles and Duties

Complex Issues in Guardianship

The Fall 2009 class was held in Spokane and Toppenish to provide access to students in Eastern Washington. This was also the first class to follow an updated and longer course format. The number of hours increased from 90 hours to 100 hours. The courses were restructured:<sup>2</sup>

The Education Committee worked with the University of Washington regarding the revision of the CPG Manual's government benefits section. A subject matter expert developed and wrote the section which includes lists of agencies, the structure of the agencies, the services provided by the agencies, and contact information. There is also guidance for how to apply for and receive benefits for clients.

Fifty-nine individuals have earned a certificate from the UWEO Guardian Certificate Program. The students have come from 17 counties, predominantly King, Pierce, and Spokane (See Exhibit 3). The majority of the students are women (87%). The students' median age is 51 years, the youngest student's age was 28 years and the oldest student's age was 68 years. (See Exhibit 4).



<sup>2</sup> See Appendix G for an overview of the information taught in each course.

## ETHICS COMMITTEE

Under General Rule 23(h), the Board may issue Ethics Advisory Opinions to inform and advise certified professional guardians and certified agencies of their ethical obligations. Any certified professional guardian may request an opinion.

At the end of November 2008, the Committee followed up on a request for an opinion in Ethics Advisory Opinion (EAO) 2008-001. The request involved questions about a professional guardian's authority to release confidential information to a court monitor. The issue was resolved by the local Superior Court. The Committee determined that there was no longer a need to issue an ethics opinion and presented the recommendation to the Board at its January 2009 meeting.

Also at the January meeting, the Committee presented regulations 301.2 and 302.2 that would clarify the circumstances under which the Committee would issue an opinion. Those regulations stated that the request for an Ethics Advisory Opinion had to relate to a specific factual situation. The Board voted on the proposed regulations and posted them for comment. After expiration of the comment period, the Board adopted the regulations at its March 2009 meeting.

The Ethics Advisory Committee received no new requests in 2009. The Committee did receive a request from a certified professional guardian to modify Ethics Advisory Opinion (EAO) 2005-001.

EAO 2005-001 concerns the circumstances under which a certified professional guardian or agency may petition for self-nomination. There are two public policy objectives underlying the opinion. The first is to ensure that individuals in need of a guardian have access to that service. The second is to ensure that there is no self-dealing and no conflict of interest. The existing opinion set out five detailed steps with multiple sub-steps for a certified professional guardian to follow.

The Committee met and discussed the proposed modifications which would streamline EAO 2005-001 and make it easier for guardians to follow and for courts to determine if self-petitioning was appropriate. The Committee recommended creating two steps for guardians to follow: 1) engage in an investigation and document the results in an Affidavit or Declaration, and 2) disclose any relationship the guardian might have with the party requesting guardianship. The first step contained details about the type of investigation a guardian should conduct including, identifying alternatives, providing a written request from the party requesting guardianship, providing documentation from third parties regarding the facts set out in the petition, and providing documentation about the guardian's meeting with the alleged incapacitated person.<sup>3</sup>

The Committee took the revised opinion to the Board for approval at the January 2010 meeting and it was adopted by the Board.

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<sup>3</sup> The Revised EAO No. 2005-001 is in Appendix E

## REGULATIONS COMMITTEE

The Board revived the Regulations Committee (formerly the Rules Committee) in late 2009. The impetus was a decision to review the Standards of Practice in light of the National Guardianship Association Standards, the Council of Accreditation Standards, and a request by the Supreme Court for the Board to respond to the concerns raised by a member of the public.

By the end of the year, the Committee had:

- Agreed on a format for the revisions to the Standards of Practice;
- Created a Table of Contents with some new sections;
- Re-organized the existing regulations to follow the new Table of Contents; and
- Set up monthly meetings to continue to work on the revisions.

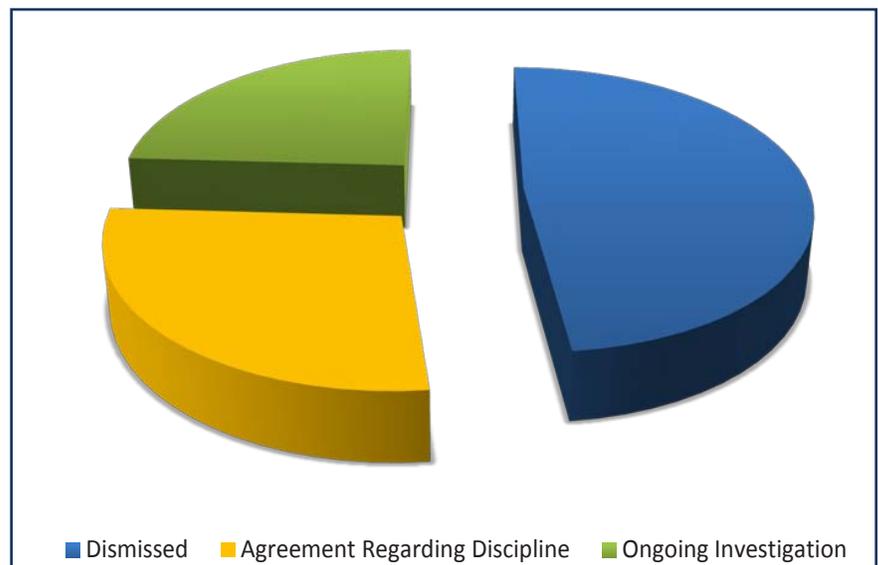
## STANDARDS OF PRACTICE COMMITTEE

The Standards of Practice Committee (SOPC) reviewed grievances and the Disciplinary Regulation (DR) 520 Audit results. The SOPC meets at least monthly.

### Review of Grievances

The CPG Board received 19 grievances in 2009. Any person may file a grievance against a CPG or the Board may determine on its own that a grievance should be opened. Grievances involving active cases are sent to the Superior Court with jurisdiction over the guardianship case for investigation. If the guardianship case has been closed or the grievance does not involve one specific case, the SOPC will initiate its own investigation through the use of AOC staff.

Once the investigation by the Superior Court or AOC staff is complete, the SOPC will determine what action to take. The SOPC may direct further investigation, dismiss the grievance for lack of actionable conduct, dismiss for failure to allege any violation of the Standards of Conduct or other regulations, recommend entering into an Agreement Regarding Discipline, or recommend filing a complaint against the CPG. If the SOPC recommends entering into an Agreement Regarding Discipline or filing a complaint, the Board must approve. All Agreements Regarding Discipline are disciplinary actions and may be found at the Board's web site at: [www.courts.wa.gov/cpg](http://www.courts.wa.gov/cpg) on the right-hand side of the page under "Disciplinary Proceedings".



There were several grievances that had been opened in prior years and investigations on some of those cases were completed in 2009<sup>4</sup>. Of the 29 grievances handled by the SOPC in 2009:

- Three were dismissed for lack of jurisdiction, that is, the conduct did not involve a certified professional guardian acting as a guardian;
- Three were dismissed because they were duplicates of prior grievances and the grievant provided no new information;
- Eight were dismissed for lack of any actionable conduct;
- Eight resulted in an Agreement Regarding Discipline; and
- Seven were still open at the end of 2009.

#### DR 520 Audit

At the end of 2008, the Board decided to audit all CPGs for the timeliness of filing certain reports: inventory, personal care plan, annual accountings, annual status reports, petitions to approve budgets, petitions for final reports, and filing of bonds. The Board discussed the implementation of the Audit and determined that it needed more data before deciding on the percentage of each guardian's cases to be audited. The Board requested all CPGs to provide a case list by May 2009. From that list, the Board was able to determine that there were approximately 3400 guardianship cases in which a CPG or CPG Agency was the guardian. CPGs manage about 17% of all guardianship cases in Washington State.

With the new information about the total number of cases, the Board determined that 40% of a guardian's or guardian agency's cases (or five cases, whichever was greater) would be audited. The look-back period of the audit was to November 2008, when DR 520 was adopted. Guardians were selected monthly by a random process. If a CPG was selected and he or she was a member of a guardian agency, then all guardians in that agency and the agency itself were audited.

Once the guardian was selected, he or she provided a case list and a random selection of 40% of the cases were audited for timeliness. The data on timeliness was gathered by using SCOMIS, the court's case management system. The SOPC took the following actions on review of the case data:

- Cases currently out of compliance: If the audit revealed that a guardian had cases that were out of compliance with the filing requirements of RCW 11.88 or RCW 11.92, an "inquiry" was opened. The guardian and the court received a letter outlining the issues. The guardian had four weeks to come into compliance.
  - If the guardian brought his or her cases into compliance and there was no determination by the court that further action was required, the SOPC could close the inquiry; or
  - The SOPC could determine that the inquiry should not be closed and that the guardian should be audited again within one year to ensure continued compliance.

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<sup>4</sup> See Appendix C for a complete list of grievances handled by the SOPC in 2009.

- Currently in compliance with prior non-compliance: If the guardian had been out of compliance with the filing requirements of RCW 11.88 or RCW 11.92 in the six months prior to the date of the audit, but was currently in compliance, the SOPC could notify the guardian of its concern. The SOPC could also determine that the court should be notified.
  - The Guardian Investigator could close the audit without SOPC review unless the following was true:
    - 40% or eight cases, whichever is smaller, of audited cases were filed late (30 days or less); or
    - three cases were filed more than 30 days late.
- Currently in compliance with no prior non-compliance: The audit of the guardian was closed and no further action was taken.

The first selection of guardians took place in July 2009. As of December 2009, 196 guardians had been selected and 139 guardians had completed the audit process. Of the completed audits, all but one had been closed with no further action required. The one audit that was not closed resulted in an Agreement Regarding Discipline because of the guardian's late filings. The majority of guardians were in compliance with all filing deadlines and had no prior non-compliance.

The audit process was proceeding on schedule and it was expected that the selection of guardians for audit would be completed by March 2010. More data about the audit results will be in the 2010 Annual Report.

## APPEALS COMMITTEE

The Appeals Committee is an Ad Hoc Committee that is created when the Board denies an application for certification and the applicant appeals the Board's decision. In early 2009, there was an increase in the number of appeals prior to the Board's June 2009 revision of the Application Regulations and clarification of the type of experience needed to become a certified professional guardian. There were several Appeal Committees, each consisting of three Board Members.

- Appeals Committees considered ten appeals in 2009.
- All but three of the appeals resulted in recommendations from the Appeals Committees to approve the applicant.
- The Board followed the recommendation of the Appeals Committee in all cases.

## AD HOC COMMITTEES

In 2009, the Board had two Ad Hoc Committees, one to review the certification experience requirement and the other on flood preparedness.

### Ad Hoc Committee on Certification Experience Requirement

In April 2009, the Ad Hoc Committee on Certification Experience Requirement was formed to further define the experience requirement for certification as a professional guardian under the recent amendments to General Rule (GR) 23(d)(1)(iv) & (v):

An individual applicant shall:

- (iv) Possess an associate's degree from an accredited institution and at least four full years' experience working in a discipline pertinent to the provision of guardianship services, or a baccalaureate degree from an accredited institution and at least two full years' experience working in a discipline pertinent to the provision of guardianship services;
- (v) The experience required by this rule must include decision-making or the use of independent judgment on behalf of others in the area of legal, financial, social services or healthcare or other disciplines pertinent to the provision of guardianship services;

The Committee included Board members and members from the Office of Public Guardianship, Disability Rights Washington, and the Washington Association of Professional Guardians. The Committee looked at whether:

- The advent of the UWEO Guardianship Certificate Program should affect the weighting of experience, especially for those with advanced degrees;
- The experience needed to become a CPG could be gained through volunteer work;
- The experience needed within the listed disciplines must have been gained while working with incapacitated persons, and
- A competency/skill-based approach should be used to measure an applicant's qualifications for certification.

The Committee met twice and prepared recommendations for the Board's action at its June meeting. At that meeting the Board addressed the questions and made the following decisions and recommendations:

- Recommend to the Supreme Court that the phrase, "on behalf of others" be deleted from GR 23(d)(1)(v).
- Adopt a regulation to indicate that "on behalf of others" means for the benefits of others and is not limited to incapacitated persons.
- Recommend to the Supreme Court that those with higher level degrees—Masters, J.D., Ph.D. or equivalent degrees—be required to have one year of pertinent experience.
- Adopt a regulation to indicate that volunteer work that was supervised, verifiable, and based on actual hours worked counted towards the experience needed.
- Adopt a regulation that experience providing services for a family member does not count towards the experience needed.

- Adopt a regulation that would interpret the GR 23(d)(1)(iv) term “experience working in a discipline pertinent to the provision of guardianship services” as experience in which the applicant has developed skills that are transferable to the provision of guardianship services.
- Defer a discussion about a competency/skill-based approach in light of the progress made defining the experience requirement.

### **Flood Preparedness Committee**

In September 2009, The Board Chair reported on the danger of flooding from the diminished storage capacity of the Hanson Dam and that areas of Auburn, Kent, Renton, and Tukwila could be flooded. Judge Prochnau suggested that an Ad Hoc Committee be formed to work on a brochure for guardians with clients at risk for the effects of flooding, or who might themselves be at risk. The Committee decided not to create a brochure, but to provide links to resources on the CPG web site. The resources included the Washington Emergency Management Division, King County and Seattle Public Health, and Aging and Disability Services Administration. The link can be found at the CPG web site at [www.courts.wa.gov/cpg](http://www.courts.wa.gov/cpg) in the center section under “Guardian News”.

# APPENDICES

- A: BOARD MEMBERS
- B: ADMINISTRATIVE OFFICE OF THE COURTS STAFF
- C: GRIEVANCE LIST
- D: CONTINUING EDUCATION CLASS LIST
- E: NEW REGULATIONS
- F: ETHICS ADVISORY OPINION REVISED 2005-001
- G: UNIVERSITY OF WASHINGTON EDUCATION  
OUTREACH CLASS OVERVIEW



# APPENDIX A: BOARD MEMBERS

## **Judge Kimberley Prochnau, Chair**

*King County Superior Court*  
Regulations Committee Member  
Term Ends: 9/30/2011

## **Ms. Robin Balsam**

*Attorney, Robin Balsam, P.S., and Certified Professional Guardian, Commencement Bay Guardianship Services*  
Applications Committee Co-Chair  
Ethics Committee Member  
Term ends: 9/30/2010

## **Ms. Ree Ah Bloedow**

*Legal Benefits Attorney*  
*Department of Social and Health Services*  
Applications Committee Co-Chair  
Term ends: 9/30/2011

## **Ms. Nancy Dapper**

*Alzheimer's Association Western & Central Washington State Chapter*  
Ethics Committee Member  
Standards of Practice Committee Member  
Term ends: 9/30/2010

## **Judge James Lawler**

*Lewis County Superior Court*  
Regulations Committee Member  
Term ends: 9/30/2012

## **Prof. Winsor Schmidt, J.D., LL.M.**

*Endowed Chair in Urban Health Policy*  
*Dept. of Family and Geriatric Medicine*  
*Univ. of Louisville School of Medicine*  
Education Committee Member  
Regulations Committee Member  
Term ends: 9/30/2012

## **Comm. Joseph Valente**

*Spokane County Superior Court*  
Standards of Practice Committee Chair  
Regulations Committee Member  
Term ends: 9/30/2010

## **Judge Christopher Wickham, Vice-Chair**

*Thurston County Superior Court*  
Ethics Committee Chair  
Term ends: 9/30/2011

## **Mr. Gary Beagle**

*Certified Professional Guardian, Beagle, Burke & Associates*  
Education Committee Chair  
Term ends: 9/30/2010

## **Dr. Ruth Craven, EdD, RN, FAAN**

*Professor Emeritus, Biobehavioral Nursing and Health Systems*  
*School of Nursing, Univ. of Washington*  
Education Committee Member  
Term ends: 9/30/2010

## **Mr. John Jardine**

*Certified Professional Guardian, Unlimited Guardianship Services*  
Education Committee Member  
Regulations Committee Member  
Term ends: 9/30/2010

## **Mr. Christopher Neil**

*Attorney, Neil, Nettleton and Neil, P.S., and Certified Professional Guardian, Pacific Guardianship Services*  
Regulations Committee Chair  
Standards of Practice Committee Member  
Term ends: 9/30/2012

## **Judge Robert Swisher**

*Benton and Franklin Counties Superior Court*  
Standards of Practice Committee Member  
Regulations Committee Member  
Term ends: 9/30/2012

## **Ms. Sharon York**

*ARC of Washington*  
Applications Committee Member  
Term ends: 9/30/2011



## APPENDIX B: AOC STAFF

**Deborah Jameson**

*Grievance Investigator*

**Tina Williamson**

Court Program Assistant

**Sharon Eckholm**

Guardian Program Coordinator

**Sylvia Nelson**

Administrative Secretary

## APPENDIX C: GRIEVANCE LIST

Case No.	County	Nature of Allegations	Disposition
2003-011	Spokane	Alleged mismanagement of IP's <sup>1</sup> person and estate and failure to file timely reports.	Settlement Agreement—Monitoring compliance. <sup>2</sup>
2004-004A 2005-014A	King	Alleged mismanagement of IP's estate.	Agreement Regarding Discipline—monitoring compliance.
2004-004B 2005-014B	King	Alleged mismanagement of IP's estate.	Agreement Regarding Discipline—monitoring compliance.
2005-009	Snohomish	Alleged mishandling of IP's estate.	Disciplinary proceeding Complaint issued-resolved with Agreement Regarding Discipline.
2007-021	Thurston	Alleged mismanagement of IP's person.	Investigation ongoing.
2007-025	King	Alleged mismanagement of IP's estate and failure to respond to IP or others.	Agreement Regarding Discipline—monitoring compliance.
2008-012	Grays Harbor	Alleged mismanagement of IP's estate and ethical violations.	Agreement Regarding Discipline. Monitoring completed.
2008-021	King	Alleged mismanagement of IP's person and estate.	Dismissed. No actionable conduct.
2008-023	King	Alleged ethical violations.	Agreement Regarding Discipline.
2008-025	King, Pierce	Alleged violation of general duty of guardian.	Dismissed. No actionable conduct.
2009-001	King	Alleged mismanagement of IP's estate and failure to respond.	Dismissed. No actionable conduct.
2009-002	King	Allegation that guardian failed to properly supervise IP.	Dismissed. No actionable conduct.
2009-003	Spokane	Alleged mismanagement of IP's person and estate and failure to file timely reports.	Dismissed. No actionable conduct.
2009-004	King, Pierce	Allegation that guardian violated Standards of Practice.	Investigation ongoing.
2009-005	Pierce	Alleged mismanagement of IP's estate and failure to respond.	Dismissed. No actionable conduct.
2009-006	Snohomish	Alleged mismanagement of IP's estate and failure to respond.	Agreement Regarding Discipline—monitoring compliance.
2009-007	Spokane	Alleged mismanagement of IP's person and failure to respond.	Dismissed. No actionable conduct.
2009-008	Thurston	Alleged mismanagement of IP's estate and violations of Standards of Practice prior to appointment.	Dismissed. No actionable conduct.

## GRIEVANCE LIST CONT.

<b>Case No.</b>	<b>County</b>	<b>Nature of Allegations</b>	<b>Disposition</b>
2009-009	Grays Harbor	Allegation that guardian failed to file timely reports.	Investigation ongoing.
2009-010	King	Alleged mismanagement of IP's person and failure to consult.	Investigation ongoing.
2009-011	Pierce	Allegation that guardian moved IP inappropriately.	Investigation ongoing.
2009-012	Snohomish	Allegation that guardian mismanaged termination of guardianship.	Investigation ongoing.
2009-013	Spokane	Alleged mismanagement of IP's person and failure to consult.	Investigation ongoing.
2009-014	King	Allegation that guardian acted improperly.	Dismissed. No jurisdiction.
2009-015	Pierce	Allegation that guardian failed to file reports and mismanaged IP's estate.	Dismissed. No jurisdiction.
2009-016	Spokane	Allegation that guardian mismanaged IP's person and estate.	Dismissed. Duplicate prior grievance; no new information.
2009-017	Spokane	Allegation that guardian mismanaged IP's estate.	Dismissed. Duplicate prior grievance; no new information.
2009-018	Pierce	Allegation that guardian mismanaged IP's estate and that guardian's fees were excessive.	Dismissed. Duplicate prior grievance; no new information.
2009-019	Thurston	Allegation that guardian acted improperly prior to appointment.	Dismissed. No jurisdiction

## FOOTNOTES

1 "IP" stands for incapacitated person.

2 Agreements are available for review at [www.courts.wa.gov/cpg](http://www.courts.wa.gov/cpg), then go to the right-side of the page and look for "Disciplinary Proceedings"

# APPENDIX D: CEU CLASS LIST

Sponsor	Class Title	Date	Ethics	Estate	Person	General
WSBA	Elder Law	1/23/2009	1.5	2.75	1	1.25
Senior Support Services	Death w/Dignity Ethics	1/30/2009	1.5			
Empire G'ship	Conference	3/11/2009	2	4	4	2
WADSA	Mental Health for Older Adults	3/17/2009			3	
Barbara Green	Roundtable	3/19/2009			1.5	
Bridge Builders	Bridge Builders-Day 1	3/25/2009	2	1	1	3
Bridge Builders	Bridge Builders--Day 2	3/26/2009		2	2	1
WADSA	It's All in the Head	4/22/2009			3	
Alzheimer's Society	24th Annual Conference--Day 1	4/23/2009			6	
NGA	Colloquium	4/24/2009	3.25		2.75	
Alzheimer's Society	24th Annual Conference--Day 2	4/24/2009				
KCBA	Title 11 GAL Training--Day 2	4/24/2009	1			4.75
Kitsap Co. Superior Ct	GAL Training	5/7/2009		1.5	2	2
WAPG	Spring Training	5/7/2009	1	2	2	1
Whatcom Co. Superior Ct	Title 11	5/8/2009	1	2	2	1
KCBA	Social Security	5/15/2009		4.75		
WADSA	Diabetes 101	5/19/2009			3	
Barbara Green	Cultural Competency	5/21/2009			1.5	
KCBA	Medicaid Bootcamp	5/29/2009		3.25		
AOC	DR Ethics Session	6/11/2009	1			
Barbara Green	Roundtable	6/18/2009			1.5	
WSBA	Alzheimers	6/19/2009			4	2
WADSA	ABCs of TBI	6/25/2009			2.75	
WSBA	Protect Vulnerable Adults	7/31/2009	1	1.5	2.75	0.75
Barbara Green	Creativity and Aging	9/17/2009			1.5	
WSBA	Elder Law	9/18/2009	0.5	0.75	2.5	2.75

CEU CLASS LIST CONT.

Sponsor	Class Title	Date	Ethics	Estate	Person	General
WSBA	54th Annual Estate Planning - Day 1	10/1/2009		3.75		3.5
Eagle	Fall Guardianship Seminar - Day 1	10/1/2009	1	1	3	1
WSBA	54th Annual Estate Planning - Day 2	10/2/2009		2.75		1
Eagle	Fall Guardianship Seminar - Day 2	10/2/2009	1.5	2	1	1.5
NGA	2009 National Conference on Guardianship	10/3/2009				
KCBA	Internet Investigative Research Strategies for Lawyers and Legal Professionals	10/6/2009				3
KCBA	Probate GAL and Litigation GAL Issues	10/14/2009				3.75
Barbara Green	Housing Options: Communication in Assisted Living	10/15/2009			1.5	
Alzheimer's Society	Fine Tuning Dementia Care	10/16/2009	1		3.25	
Senior G'ship Services	Sixth Annual Vulnerable Adult Abuse Conference - Day 1	10/19/2009			3.25	2.25
Senior G'ship Services	Sixth Annual Vulnerable Adult Abuse Conference - Day 2	10/20/2009			1.25	4.25
WADSA	Aging & Immigration: The Latino and Russian...	10/22/2009			3	
WADSA	Dementia Care: The Tools You Need to Make a Difference	10/23/2009			3	
TPCBA	8th Annual Guardianship Seminar	11/5/2009	1	1.5	0.75	4.5
WAPG	2009 Fall Training	11/10/2009	1	2	2	1
NAELA	Elders in Crisis	11/13/2009	0	2.5	3	0.5
Anita Quirk	Insurance Options and Other Protections for Your Client	11/17/2009		4	1	1
WADSA	Revisiting Geriatric Failure to Thrive	11/19/2009			1.5	
WADSA	Seniors & Seizures: What Professionals in Aging Need to Know	11/19/2009			1.5	
Careforce	Overcoming Challenges to Improve Transitional Care	12/3/2009			1.5	
Anita Quirk	Ethics, ITAs and Vulnerable Adults	12/10/2009	2		2	
<b>TOTAL CLASS HOURS</b>			18.25	38.25	74.25	45.5

## APPENDIX E: NEW REGULATIONS

- 102.3** "Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) includes volunteer work experience that is supervised, verifiable and based on actual hours worked, except as otherwise set forth in these regulations. (Adopted 8-10-09).
- 102.4** "Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) does not include providing services for a family member. (Adopted 9-14-09).
- 102.5** "Experience working in a discipline pertinent to the provision of guardianship services" in GR 23(d)(1)(iv) includes experience in which the applicant has developed skills that are transferable to the provision of guardianship services. (Adopted 8-10-09).
- 102.6** "Decision-making or the use of independent judgment on behalf of others" in GR 23(d)(1)(v) is not limited to incapacitated persons. (Adopted 8-10-09).
- 102.7** "On behalf of others" in GR 23(d)(1)(v) means for the benefit of others. (Adopted 8-10-09).
- 103.2.5** A certificate of completion of the mandatory certification training shall be valid for two years from the date of completion of the training. (Amended 4-8-02, 10-11-04 and 5-11-09)
- 205.1** An active Guardian or sponsoring agency desiring approval of a continuing education activity shall submit to the Committee all information called for by Form 1 at least 30 days prior to the date scheduled for the class, along with an application fee of \$25.00 for each occurrence. If filed less than 30 days before the activity, the application fee is \$50 for each occurrence. Applications for retroactive approval will be considered if submitted with all the information required by Form 1 within 30 days of the continuing education activity and with the \$50.00 fee. (Amended 1-11-10).
- 301.2** Any Guardian, Agency, or Board member may request in writing that the Board issue an ethics advisory opinion regarding the application of the Standards of Practice to a specific factual circumstance. (Amended 3-9-09)
- 302.2** The Committee shall review all requests for ethics advisory opinions and draft responses to those requests the Committee decides to answer. The Committee's decision whether or not to draft an ethics advisory opinion shall be based on whether a specific factual circumstance is presented, whether the opinion would involve the application of the Standards of Practice, whether the opinion would duplicate already-existing public opinions, whether the question involves an issue of general significance, and the resources of the Committee. The Committee and the Board shall be under no obligation to draft an ethics advisory opinion in response to a request. (Amended 3-9-09)

# APPENDIX F: ETHICS ADVISORY OPINION

## **OPINION #: 2005-001**

**Date:** March 13, 2006, Revised January 11, 2010

### **Brief restatement of question(s) posed:**

When may a Certified Professional Guardian petition for appointment of oneself as guardian?

### **Directly applicable SOP's, statutes and other law or standards:**

- 403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or conflicts of interest arise when the guardian has some personal, family, or agency interest from which a personal benefit would be derived. Any potential conflict shall be disclosed to the court immediately.
- RCW 11.88.030 (1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis.
- The facts alleged in a petition for guardianship are ordinarily verified under penalty of perjury by the petitioner.
- GR 24 (a)(1) Practice of law defined as "Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration."

### **Analogous standards and values (e.g. legal, medical):**

The practice of nominating oneself as guardian automatically raises the appearance of self-dealing.

### **Comments:**

The Certification Board recognizes that there are two public policy objectives underlying this opinion. The first is the public policy need to assure that individuals in need of a guardian have access to that service. The second public policy objective is to assure that the practice of the profession by certified professional guardians results in conduct which is not self-dealing and does not involve the actual or appearance of a conflict of interest. This ethical opinion is intended to recognize the inherent tension between these two public policy objectives and to reconcile those tensions in a manner that provides for the highest ethical practices while making available guardian services to those who need them.

The intent of this opinion is not to discourage the filing of the petitions in good faith. It is the intent of this opinion however, to assure the transparency of the proceedings to the extent that any conflicts or appearances of conflict which a certified professional guardian may have are disclosed and that steps are taken to negate both the real and appearance of self-serving.

Professional guardians have a clear and immediate conflict of interest in nominating themselves to be appointed guardian and to be paid from the estate of the Incapacitated Person. A certified professional guardian should avoid whenever possible initiating a petition for appointment of oneself as guardian.

Ordinarily the facts necessary to complete a petition for guardianship are not available at first hand to a certified professional guardian but are provided by professionals interested in having a guardian appointed.

In many situations, and in particular in the case of alleged incapacitated persons who have limited or no estate, there is no other person with sufficient expertise and interest in the alleged incapacitated person to file a petition for guardianship. Referral sources such as facility staff or government employees who are able to identify the need for guardianship may have institutional limitations on their ability to become formally involved as a petitioner for the guardianship.

There are circumstances in which a care provider or other entity with whom the certified professional guardian has a close personal or professional relationship files a petition for guardianship using an attorney provided by the certified professional guardian, or files a petition for guardianship with the active assistance of the certified professional guardian, with the intention that the certified professional guardian will become guardian at the conclusion of the proceeding. In such circumstances, the certified professional guardian has an obligation to disclose to the Court by Affidavit or Declaration the nature of that relationship.

This opinion acknowledges that the Court with local jurisdiction is the final arbiter as to the need for a guardianship and the appointment of the guardian. The petitioning certified professional guardian should be aware of the Court's ability to require the petitioner to pay any or all fees and costs of proceedings at the Court's discretion, including the fees of the guardian ad litem.

**Opinion: The following are considered to be best practices for Certified Professional Guardians:**

The certified professional guardian should inform referral sources as to how guardianships are processed and should offer to refer interested parties to counsel if necessary. However, petitioners for individuals with no close family or friends, limited assets, living in long term care environments, and/or with complicated care needs are often not available. As a result, the practical reality of the care environment is such that the availability of petitioners for those in need of a guardian is limited or non-existent. Therefore, the limited and qualified initiation of a guardianship petition by a certified professional guardian is acceptable under certain circumstances.

Specifically, if the certified professional guardian determines (a) a guardianship is in the interests of the Alleged Incapacitated Person; (b) there are no less restrictive alternatives; and (c) there is no other person willing to act as petitioner; then the certified professional guardian may act as petitioner in a guardianship.

**In initiating such petition the certified professional guardian shall,**

**1 . Consistent with state statute, engage in an investigation and document that investigation in an Affidavit or Declaration to the court the following pre-filing efforts:**

**a.** identifying any alternative nominees and providing information as to why alternate nominees who are available are not suitable or able to serve;

**b.** providing a written request from the party requesting the guardianship which identifies the basis for the request and the basis for the decision by that party not to petition;

**c.** providing documentation from third parties of the facts set out in the petition. Such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person.

**d.** providing documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person.

**2 . Disclose in the Affidavit or Declaration to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.**

# APPENDIX G: FALL PROGRAM OVERVIEW

## Program Goals for Certificate in Guardianship:

At the end of this program, a student will be able to:

- Act appropriately within the role and responsibilities of a guardian as a representative of the court;
- Assure that the equality and dignity of incapacitated persons are respected, and—to the highest degree possible—to respect and help them exercise their rights to self-determination;

Work within the legal and regulatory frameworks in Washington State (RCW 11.88 - [11.92](#), GR 23, CPG Rules and Regulations) to protect the person and estate of incapacitated persons;

- Gather and distill necessary information and identify core issues affecting a specific incapacitated person, including
  - synthesizing the information and writing a plan and reports;
  - communicating appropriately with the incapacitated person, the court, family members and other interested parties; and
  - engaging in constructive problem solving when challenged by changing circumstances with the incapacitated person;
- Effectively navigate the social and health service system on behalf of client(s);
- Employ a variety of ethical frameworks and decision-making models when faced with ambiguous situations, and take action based on substituted judgment and/or best interest standards;
- Assess own appropriateness as a proposed guardian in specific cases;
- Follow the steps required to become a Washington CPG-Certified Professional Guardian; and
- Identify the issues to be considered in planning to begin, operate, and sustain an ethical, commercially-viable, professional guardianship business as an entrepreneur.

## **Guardianship 101 –Guardianship Law, Concepts, and Practice:**

### Course Objectives:

At the end of this course, the student will be able to:

- List the statutory duties of a guardian of person and estate, and identify the limitations on guardians in Washington State;
- Describe how potentially incapacitated persons are identified, become involved in the guardianship legal process, and the alternatives to guardianship;

## FALL PROGRAM OVERVIEW CONT.

- Discuss the historical and legal context of the guardian-client relationship, including fiduciary duty;
- Discuss how the decision standards (substituted judgment and best interests) and concept of residual capacity function as protections for the rights of incapacitated persons;
- Identify the multiple institutions, players, and stakeholders encountered during guardianship practice and discuss how they create both challenges and opportunities in daily practice;
- Identify and use basic concepts that apply to the tasks of guardianship practice;
- Identify challenges in communication with incapacitated persons and strategies for ascertaining information, focusing on skills of listening and observation; and
- Enumerate the steps of an ethical decision-making process, including strategies for ethical analysis, and understanding its application.

### Live Portion:

Twenty-one Contact Hours (all of first weekend and one day of second weekend)—The live class presentations on the issues that lead to and underlie the legal concept and practice of guardianship of an adult. This course is meant to provide students with the fundamentals of guardianship that would apply to anyone taking on the role, but of particular importance to those seeking to be certified professional guardians.

### Online Portion:

Nine Contact Hours—the ten lessons for this course address basic tasks and concepts that all guardians must address for their Incapacitated Persons (IPs). Each of these lessons is designed to stand alone. Students will have flexibility in the order and timing of the completion of the lessons as long as intermediate deadlines are met. The sequence listed in the schedule is recommended, but not required.

Each lesson is concluded with a quiz that must be passed with at least 80% correct answers. Most of the quizzes are multiple choice, short answer, true/false, or matching. This allows them to be automatically graded by the on-line system, so that students receive immediate feedback and can thus progress to the next lesson at their own pace or return to review the lesson materials more extensively and retake the quiz. There will be an instructor available to the students during this time.

Experienced guardians taking the course may be able to take the quizzes without reviewing the materials, but will be cued to do so if they do not pass the quiz. There will be an additional lesson on technology use to ensure all students have the requisite skills to be successful in subsequent courses.

