

CERTIFIED PROFESSIONAL GUARDIAN BOARD

Carole Gaherin, CPG No. 10330

CPGB No. 2010-020, 2011-021

**AGREEMENT REGARDING DISCIPLINE
AND STIPULATED FINDINGS**

Disciplinary Regulation 514

The parties, Carole Gaherin (Ms. Gaherin) CPG No. 10330 and the Certified Professional Guardian Board (Board), enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. Ms. Gaherin has committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of the disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian record of Ms. Gaherin and will be a public record and subject to public access.

1. JURISDICTION

1.1 At all times relevant herein, Ms. Gaherin was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No.10330. Ms. Gaherin was certified on May 26, 2005.

1.2 The Certified Professional Guardian Board is responsible for reviewing any allegation that a certified professional guardian or certified professional guardianship agency has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. Pursuant to its Disciplinary Regulations, the Board may impose discipline, sanctions, costs and other remedies upon a finding of violation, or

may recommend that the Washington Supreme Court impose discipline, sanctions and costs, when the recommendation is for suspension or decertification of the certified professional guardian or agency.

2. STATEMENT OF FACTS

2.1 On or about August 23, 2010, the Standards of Practice Committee reviewed allegations in a letter of complaint against Ms. Gaherin and decided to open a grievance, CPGB No. 2010-020, based on allegations that the guardian failed to timely respond to the incapacitated person and her family, failed to notify the care facility of the guardianship in a timely manner, failed in her fiduciary duty in terms of handling the incapacitated person's accounts, and failed to visit the incapacitated person on a regular basis. Ms. Gaherin was requested to respond to the allegations.

2.2 Regarding the allegation that the guardian failed to timely respond to the incapacitated person and her family: The incapacitated person's daughter said that shortly after Ms. Gaherin was appointed as guardian, she tried to arrange a time with Ms. Gaherin to give her the incapacitated person's paperwork, bills, bank statements, insurance information, post office box key, etc. Ms. Gaherin cancelled three appointments, left a message saying that she would reschedule, but did not. The incapacitated person's daughter finally mailed everything in March to Ms. Gaherin, except for the post office box key and asked Ms. Gaherin to confirm receipt. Ms. Gaherin did not confirm receipt. Ms. Gaherin said that she does not keep records of all phone calls, but will make notes of anything important discussed in a call and the date and time. Ms. Gaherin provided her chart notes. Those notes indicate that she met the family three times, once at the guardianship hearing and two other times during the month of January 2010. There are no notes at all about any phone calls with the family members. Ms. Gaherin also said that she tried to return phone calls from the incapacitated person's daughter, but had the wrong number entered in her phone and would leave a message after hearing a recording and wondered why she did not get called back.

2.3 Regarding the allegation that Ms. Gaherin failed to notify the care facility of the guardianship in a timely manner: The Administrator of the facility where the incapacitated person resides stated that she

did not receive any paperwork showing that Ms. Gaherin was the guardian until the end of April. Ms. Gaherin admitted that she should have contacted the facility sooner, but knew the family was in contact with the facility. Ms. Gaherin's chart notes show that she visited the facility where the incapacitated person resided and met with the Administrator on April 15, 2010.

2.4 Regarding the allegation that Ms. Gaherin failed to properly handle the incapacitated person's accounts: The incapacitated person's daughter said that the incapacitated person's bank account was left open until April and the incapacitated person wrote checks out of the account, and that Ms. Gaherin wrote five checks in May for the incapacitated person's March to April participation and all of the checks were returned for non-sufficient funds. Ms. Gaherin admitted that there were overdraft charges, but thought that she had reimbursed the incapacitated person's estate for the charges. Ms. Gaherin said that she had forgotten about the incapacitated person's bank account.

2.5 Regarding the allegation that Ms. Gaherin failed to visit the incapacitated person: Ms. Gaherin provided copies of notes from visits with the incapacitated person. Ms. Gaherin said that her care coordinator visited the incapacitated person monthly after April 15, 2010 until September 2010 and the notes corroborate that statement. Ms. Gaherin did not visit because she thought that visits from her would upset the incapacitated person.

2.6 Under RCW 11.92.040 and RCW 11.92.043, a guardian has specific reporting requirements as follows:

2.6.1 RCW 11.92.040

- (1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;
- (2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration. . . .

2.6.2 RCW 11.92.043

- (1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in

activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person. . . .

2.7 On January 5, 2010, Ms. Gaherin was randomly selected to have her cases audited for timeliness in filing certain reports. Ms. Gaherin has cases in Lincoln, Stevens, and Spokane Counties. Ms. Gaherin had 41 cases and sixteen of those were reviewed. Of those sixteen, eleven of them had instances of prior non-compliance with filing deadlines, on average the reports were filed 17 days late.¹

2.8 On or about January 7, 2011, all of Ms. Gaherin's cases were re-audited for the timeliness of filing certain reports for the period between December 2009 and January 2011. Ms. Gaherin had instances of non-compliance in 22 of her 35 cases. On or about April 25, 2011, the Standards of Practice Committee of the Board opened a grievance, CPGB No. 2011-021, based on the results of a re-audit of Ms. Gaherin's cases.

2.9 On April 28, 2011, the Superior Court in Spokane County held a Show Cause hearing in which Ms. Gaherin was asked to explain why reports that were due in February 2011 had not been filed in three cases. Notices of non-compliance had been sent out on March 17, 2011 and the guardian had responded by filing a statement that the reports had been filed on February 28, 2011. The court reviewed the case files and found that the guardian was incorrect and no reports had been filed. At the April 28 Show Cause hearing, the guardian admitted that the overdue reports in the three cases had not been filed. The court issued an order finding that the guardian had breached her fiduciary duties by not filing reports in a timely fashion. The court also made a finding that the guardian made false or misleading statements to the court as to the reports. The court prohibited Ms. Gaherin from taking any new guardianship cases in Spokane or any other county in Washington.

2.10 On July 5, 2011, the Spokane County Guardian Monitoring Program ran a report showing that during the time period from July 7, 2005 through November 5, 2010, Ms. Gaherin received 137 notices

¹ At the time of the audit, Spokane County allowed guardians to file reports on the last day of the month in which the report was due and be considered compliant.

of non-compliance (for filing late reports) and 39 notices to appear at a Show Cause hearing on the 54 cases she had during that time period.

2.11 In Spokane County Case No. 09-4-00868-1, there were non-sufficient funds check fees of \$185 that the guardian had not repaid to the incapacitated person's estate by the end of the reporting period. There were additional bank fees of \$117 incurred during the period of December 2010 to January 2011. Ms. Gaherin paid the bank fees back into the incapacitated person's estate.

2.12 In Spokane County Case No. 83-4-01170-3, the annual report filed in 2008 showed over \$200 in non-sufficient funds check fees. The annual report filed in 2009 also showed non-sufficient funds check fees. The incapacitated person had a simple estate with SSI as his only income source.

2.13 In Spokane County Case No. 06-4-01089-4, the audit of the annual report for the 12 months prior to 12/31/10 showed that Ms. Gaherin made duplicate fee payments of \$175 to herself and did not maintain a running balance in the check register. Ms. Gaherin could not produce receipts for all expenditures and the court ordered her to reimburse the incapacitated person's estate \$422. The court noted that the estate was a simple one in which there was a monthly payment to the care facility, to the trust account at the care facility for the incapacitated person's personal funds and to the guardian for monthly fees. Ms. Gaherin complied with the court order and reimbursed the incapacitated person's estate.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set forth in paragraphs 2.7 to 2.13, Ms. Gaherin's conduct constitutes grounds for discipline pursuant to Standard of Practice 401.3, which provides in pertinent part:

SOP 401.3 The guardian shall provide reports and accountings that are timely, complete, accurate, understandable, and in a form acceptable to the court.

3.2 Based on the facts set forth in paragraphs 2.11 to 2.13, Ms. Gaherin's conduct constitutes grounds for discipline pursuant to Standards of Practice 406, which provides in pertinent part:

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

3.3 Based on the facts set forth in paragraphs 2.1 to 2.5, Ms. Gahein's conduct constitutes grounds for discipline pursuant to Standard of Practice 401.9, 401.15, 405.3, and 406, which provide in pertinent part:

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

SOP 401.15 Guardians of the Person shall have meaningful in-person contact with their clients as needed and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.

SOP 405.3 The guardian shall be available at all times to respond to urgent need for medical decisions. The guardian shall provide directives regarding treatment or non-treatment to be followed by medical staff in emergencies.

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

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

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

...

(2) Duties and Powers.

...

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

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

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

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

503.11 Conduct demonstrating unfitness to work as a professional guardian, including but not limited to, persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.

4. AGGRAVATING AND MITIGATING FACTORS

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

Aggravating Factors. Multiple offenses, pattern of conduct, significant experience as a guardian, number of incapacitated person's at risk of harm, grossly negligent act.

Mitigating Factors. Absence of dishonesty or selfish motive, absence of a prior disciplinary record.

5. PRIOR RECORD OF DISCIPLINE

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

6. DISCIPLINARY SANCTIONS AND REMEDIES

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

6.1 Ms. Gaherin agrees that she will accept no new appointments as a court-appointed guardian.

6.2 Ms. Gaherin will prepare final reports and obtain orders approving her reports no later than April 30, 2012 in the cases listed in Exhibit A and attached to this Agreement.

6.3 By January 15, 2012, Ms. Gaherin will prepare a Notice of Withdrawal and file it with the court and send a copy to the current guardian in all cases in which she is a standby guardian.

6.4 Ms. Gaherin agrees to accept decertification by the Board as soon as she has completed all of the steps above or has fewer than three cases for pay, whichever is sooner.

7. VIOLATION OF AGREEMENT

7.1 Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, failing to file final reports and obtain orders approving them by April 30, 2012, taking any new cases, and failing to file Notices of Withdrawal in any cases in which Ms. Gaherin is standby guardian.

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

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

8. NOTICE

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

9. ENTIRE AGREEMENT

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

10. SEVERABILITY

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

11. LAWS GOVERNING

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

12. RIGHT TO COUNSEL

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

13. PRESENTATION OF AGREEMENT TO THE BOARD

Ms. Gaherin understands that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Ms. Gaherin waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation. The SOPC reserves the right to withdraw this Agreement at any time prior to the presentation to the Board.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:



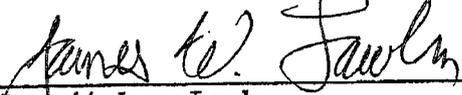
Carole Gaherin, CPG #10330
Date 10/21/11



Gabrielle Roth Pitner
Attorney for Carole Gaherin, WSBA #31561
Date 10/24/11

Approved and ordered by the Certified Professional Guardian Board this

14th day of November, 2011.



Honorable James Lawler
Chair, Certified Professional Guardian Board