

CERTIFIED PROFESSIONAL GUARDIAN BOARD

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Adult Guardianship Services, Inc.,)	CPGB No. 2011-032 & 2011-047
CPGA No. 10884,)	
)	AGREEMENT REGARDING DISCIPLINE
Cynthia Winters, CPG No. 10665,)	AND STIPULATED FINDINGS
)	
Respondents.)	<i>Disciplinary Regulation 514</i>
_____)	

Respondents, Adult Guardianship Services, Inc., CPGA No.10884, a certified professional guardian agency, and Cynthia Winters, CPG No. 10665, certified professional guardian, 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. The Standards of Practice Committee has determined that Adult Guardianship Services (AGS) and Cynthia Winters have violated Standards of Practice Regulations 406.1, 409.1, 409.4, 410.1, and 412.1, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of Adult Guardianship Services’ certified professional guardian agency and Cynthia Winters’ certified professional guardian files and will be a public record subject to public access.

1. JURISDICTION

1.1 At all times relevant herein, Adult Guardianship Services, Inc., CPGA No. 10884, was a certified professional guardian agency (CPGA) pursuant to General Rule (GR) 23.

1.2 At all times relevant herein, Cynthia Winters, CPGA No. 10665, was a certified professional guardian (CPG) pursuant to General Rule (GR) 23. Cynthia Winters was a manager/member and one of the designated certified professional guardians of Adult Guardianship Services, Inc., CPGA No. 10884.

1.3 At all times relevant herein, Sarah Mills was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No. 11155. Sarah Mills was a manager/member and one of the designated certified professional guardians of Adult Guardianship Services, Inc., CPGA No.10884.

1.4 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 State 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 19, 2011, the Board opened Certified Professional Guardian Board (CPGB) Grievance No. 2011-032 regarding the conduct of Sarah Mills on behalf of incapacitated person M.B. The Board received a second grievance on November 29, 2011, regarding Ms. Mills' conduct on behalf of incapacitated person M.C. CPGB Grievance No. 2011-047.

Although the two grievances involved two different incapacitated persons, they contained

substantially similar allegations: a) late payments to the adult family home (AFH); b) repeated nonsufficient funds (NSF) checks to the AFH; and c) double billing by the CPG Sarah Mills and her attorney Mr. Regeimbal.

2.2 CPGB Grievance No. 2011-032 referred to actions taken by Ms. Mills on behalf of the incapacitated person M.B. The court appointed Adult Guardianship Services, Inc., as the guardian for M.C. on September 18, 2008. As an employee of AGS, Ms. Winters had M.B. as part of her assigned caseload from April through August 2010, and was familiar with M.B. and the Lakeview Adult Family Home (AFH) where M.B. resided.

2.2.1 AGS held weekly staff meetings to review each guardian's cases. Although Ms. Winters no longer had primary responsibility for M.B., she consulted with Ms. Mills regarding M.B.'s care. Ms. Mills submitted "[M.B.] - Casenotes 2011" in this matter that record interactions between Ms. Winters and her regarding M.B. Relevant entries state:

- 3/29/11 Staff meeting: Cynthia W. and Sarah M. discussed client spending a lot of time in bed, caregiver worried. I explained this is usual for her.
- 5/10/11 Staff meeting: Cynthia W. and Sarah M. discussed the AFH participation, clients health and if this AFH is knowledgeable to be caring for our client, she is health, so will continue to try to work on the accounting with the AFH, the communication is lacking, we are not getting enough from them information-wise, seems they do not call us if they have an issue. They call the licensor first, it makes our job difficult to manage if unnec. They call the licensor about payments made.
- 5/24/11 Staff meeting: Cynthia W. and Sarah M. discussed cs mgr. Lety visited client, sitting at table, little talking, doesn't need anything
- 6/14/11 Staff meeting: Cynthia W. and Sarah Mills discussed client is spending more time in bed, up only for meals. I was informed by Assie's staff.
- 6/21/11 Staff meeting: Cynthia W. and Sarah Mills discussed client has new cough, Lety informed us client refused to go to dr appt., coughing mainly at night staff informed us, the AFH has not got a home Dr. yet to be visiting, Sarah visited client, could not reason with client to go see her Dr.

- 7/19/11 Staff meeting: Cynthia W. and Sarah Mills discussed Sarah found a home Dr. to visit, will fill out forms needed. Client is now coughing at night only, staff at AFH thinks reflux?
- 7/25/11 Staff meeting: Cynthia W. and Sarah Mills discussed meeting this week with VA for evaluation and visit client.
- 8/2/11 ... I called Cynthia Winters co-owner of AGS svcs. I explained the situation, and that the AFH will not call 911, try to get the house address from AFH and call ourselves (I was at CPG Bremerton traveling – had numbers but no address – have now rectified this problem)
- 8/4/11 Discussed the situation with Cynthia Winters also of AGS, Inc. She agrees to finding another AFH for healthcare concerns.
- 8/4/11 Staff meeting: Cynthia W. and Sarah Mills discussed clients AFH lack of care response, she is now at VMH being given O2, antibiotics and fluids. Has a bad kidney infection from untreated UTI, and dehydrated, low O2, questioning discharge upcoming. Cynthia thinks we should move her to a new AFH, for better care. I will see what we can find available due to her now more medical issues, she is not yet ready to discharge, will look into Lux
- 8/11/11 Staff meeting: Cynthia W. and Sara Mills discussed events 8/6 informed client discharging, informed AFH client moving, 8/7 actual discharge to new Luxury AFH, 8/7 got clients clothing, with much resistance, caregivers had discussed with roommate she is upset we are moving client, hurting Aussie. 8/11 Sarah will return to AFH for walker, meds, wheelchair, knick-knacks today, that were unreleased previously from AFH
- 8/16/11 Staff meeting: Cynthia W. and Sarah Mills discussed clients adjusting well in new AFH, received belongings, no further resistance at AFH getting belongings
- 8/23/11 Staff meeting: Cynthia W. and Sarah Mills discussed our refund letter to AFH, we received today, Lakeview AFH view of the health care situation – very different from the trust, will fax att MVR. Client is responding well to changes, health is improving, her eating and mingling with other residents good.
- 9/27/11 Staff meeting: Cynthia W. and Sarah Mills discussed visit from Lety casemgr client is doing fine no concerns
- 10/4/11 Staff meeting: Cynthia W. and Sarah Mills discussed client – it [sic] still on O2, but health is improving, happy, eating well, settling in.
- 10/11/11 Staff meeting: Cynthia W. and Sarah Mills discussed visit, client doing well, good appetite, likes caregivers

- 10/18/11 Staff meeting: Cynthia W. and Sarah Mills discussed client – very chatty on this last visit, brought treat, doing well.
- 10/25/11 Staff meeting: Cynthia W. and Sarah Mills discussed client AGS Inc, defending our decisions, based on SOP, to move for healthcare reasons and our bill paying, financial pmts of participation, her funds tight, AFH didn't understand when her income came in vs. pmts could be made.

2.2 CPGB Grievance No. 2011-047 referred to actions taken by CPG Sarah Mills on behalf of the incapacitated person M.C. The court appointed Adult Guardianship Services, Inc., as the guardian for M.C. on September 18, 2008. As an employee of AGS, Ms. Winters had M.C. on her caseload from April through August 2010, and was familiar with M.C. and the Adult Family Home (AFH) where M.C. resided.

2.2.1 AGS held weekly staff meetings to review each guardian's cases. Neither Ms. Winters nor Ms. Mills provided a detailed billing statement with descriptions of time spent on behalf of M.C. In the course of the investigation of this grievance, Ms. Mills provided a summary dated February 1, 2012, of her billing. This summary was not prepared contemporaneously in the ordinary course of business, and thus, was not deemed reliable evidence to prove or disprove the allegations in this grievance.

2.2.2 AGS signed a contract for the care of M.C. with Lakeview AFH on November 4, 2008. Under the terms of the contracts, payments were due on the 1st of each month with a seven-day grace period (i.e. the 7th of every month). On May 12, 2011, Ms. Winters delivered a check to the AFH for May's rent. Bank of America check no. 1002 for \$1,900 was dated May 12, 2011, and Ms. Winters signed the check as the authorized signor. Ms. Winters did not include a late payment with this check.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the Statement of Facts set forth above, Cynthia Winters' conduct, as a CPG, and as a manager/member and designated certified professional guardians of Adult Guardianship Services, Inc., constitutes violations of the Standards of Practice identified below:

- 406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.
- 409.1 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. The management of the estate shall be documented by means of accurate and complete records of all transactions.
- 409.4 The guardian shall manage the estate with the primary goal of providing for the needs of the incapacitated person.
- 410.1 The guardian is entitled to reasonable compensation for services rendered on behalf of the incapacitated person. The guardian has a duty to conserve the estate of the incapacitated person. Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty. Services requiring a minimal degree of training, skill, and experience shall be billed accordingly.
- 412.1 . . . Regardless of whether a sale or transfer occurs, a guardian remains subject to all of these standards with respect to any incapacitated persons the guardian is appointed for, including the duty to ensure continuity of care, until the guardian is discharged by the court.

3.2 Based on the facts and violations set forth above, Cynthia Winters', and, thereby, AGS' 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:

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

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

4. AGGRAVATING AND MITIGATING FACTORS

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

4.1 Aggravating Factors.

4.1.1 Ms. Winters and, thereby, AGS knew, or should have known, of issues regarding payments to the AFH for both M.B. and M.C., but failed to assure that AGS was meeting its financial obligations.

4.1.2 Ms. Winters and, thereby, AGS failed to assure continuity of care for M.B. and M.C. during the transition of ownership of AGS.

4.2 Mitigating Factors. Absence of a prior disciplinary record.

5. PRIOR RECORD OF DISCIPLINE

Neither AGS nor Ms. Winters has a prior record of discipline with the Board.

6. DISCIPLINARY SANCTIONS AND REMEDIES

The Board imposes the following disciplinary sanctions (Letter of Admonishment) and remedies on AGS and Ms. Winters 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.

Letter of Admonishment: The Board hereby imposes a Letter of Admonishment on Respondents Cynthia Winters and Adult Guardianship Services, Inc. This Agreement constitutes the Letter of Admonishment and shall be placed in the Board's disciplinary files for the Respondents.

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 show fiduciary responsibility to the all IPs under their care, discontinuing practices of double billing the IPs, and making payments on behalf of the IP in a timely manner.

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 agency and to the certified professional guardian(s) alleged to be in breach of the ARD. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

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

8. NOTICE

This Agreement shall be retained in AGS' and Ms. Winters' disciplinary files. 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 that 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. Winters acknowledges that she has the right to individual counsel for representation in this disciplinary matter, at her expense, as set forth in DR 509.1.

13. PRESENTATION OF AGREEMENT TO THE BOARD

The Standards of Practice Committee (SOPC) will present this Agreement to the Board for approval at the next regular Board meeting. The SOPC reserves the right to withdraw this offer of settlement at any time prior to the presentation to the Board. This Agreement is not binding unless, and until, the Board approves and executes the Agreement. If the Board rejects this Agreement, AGS and Ms. Winters waive any objection to any Board member who heard the initial presentation from participating in the final determination of this matter.

COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:

FILED
BY: _____
OCT 30 2013

Cynthia Winters

October 29, 2013

Cynthia Winters, CPG No. 10665
Designated CPG of Adult Guardianship Services, Inc.
CPGA No. 10884

Date

Attorney for
WSBA # _____

Date

APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS

8 DAY OF Nov., 2013.

James W. Lawler

Honorable James W. Lawler
Chair, Certified Professional Guardian Board