CERTIFIED PROFESSIONAL GUARDIAN BOARD

Holly Surface, CPG No. 11393,	)	**CPGB No. 2012-044**
Respondent.	)	**Disciplinary Proceeding Complaint** *Disciplinary Regulation 510*

The Certified Professional Guardian Board ("Board") alleges that Holly Surface, CPG No. 11393 ("Respondent") has violated the Standards of Practice (SOP). The Board hereby initiates this disciplinary proceeding pursuant to General Rule 23 (GR 23) and Disciplinary Regulation 510 for Certified Professional Guardians.

1. JURISDICTION

1.1 At all times relevant herein, Holly Surface was a Certified Professional Guardian (CPG) pursuant to General Rule (GR) 23, CPG No 11393.

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 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 November 8, 2012, the Board opened Certified Professional Guardian Board (CPGB) Grievance No. 2012-044 regarding the conduct of Holly

Surface, in the guardianship matter of incapacitated person A.M.L. The Board received an addendum to the grievance on December 13, 2012.

2.2 AML is a developmentally-disabled young man with autism. He was deemed to be high-functioning with substantial cognitive and social abilities. Prior to age 18, he resided with his divorced parents pursuant to a parenting plan.

2.3 On October 3, 1991, A.M.L turned 18-years old. On September 24, 2009, A.M.L's mother filed a petition for guardianship for full guardianship of the estate and his person alleging that he was incapacitated due to his developmental disability. The court appointed AML's mother on December 15, 2009 as Limited Guardian of the Person and Full Guardian of the Estate. Due to numerous disagreements between A.M.L.'s parents regarding A.M.L's care, the court appointed a Guardian Ad Litem on May 20, 2014 to investigate and submit recommendations. Based on the GAL's recommendations, the court appointed Alfreda Golidy as Successor Limited Guardian of the Person and Full Guardian of the Estate for A.M.L. on August 10, 2010.

2.4 Michael Regeimbal of the Law Offices of Regeimbal, McDonald, PLLC, attorney for Ms. Golidy in the A.M.L. guardianship matter, filed a Petition to Approve Annual Accounting, Care Plan and Disbursement of Funds and Appoint Limited Go-Guardian of Person and Co-Full Guardian of Estate (Petition) on December 15, 2011. The Petition sought appoint of Holly A. Surface as Co-Guardian for A.M.L. A Declaration of Proposed Guardian was completed by Ms. Surface and filed on December 29, 2011.

2.5 Neither the Petition seeking approval of Ms. Surface as co-guardian, nor Ms. Surface's Declaration of Proposed Guardian, proposed any alternatives to her appointment as Co-Guardian.

2.6 Neither the Petition seeking approval of Ms. Surface as co-guardian, nor Ms. Surface's Declaration of Proposed Guardian, affirmatively disclosed to the court that she was currently employed by the Law Offices of Regeimbal, McDonald, PLLC as a paralegal.

2.7 The court appointed Ms. Surface as co-guardian with Ms. Golidy on January 4, 2012. She served as a co-guardian of A.M.L. until November 4, 2013.

2.8 Prior to her appointment as co-guardian for A.M.L., Ms. Surface performed work as a paralegal on the guardianship of A.M.L., including preparation of the Petition seeking approval of herself as co-guardian.

2.9 After her appointment as co-guardian for A.M.L., Ms. Surface continued to be employed as a paralegal for the Law Offices of Regeimbal, McDonald, PLLC through August 30, 2013.

2.10 After her appointment as co-guardian, Ms. Surface continued to authorize the Law Offices of Regeimbal, McDonald, PLLC to perform work in the A.M.L. guardianship matter. Between January 4, 2012 and March 7, 2013, attorneys fees were incurred in the amount of $22,320.65 for work performed by the Law Offices of Regeimbal, McDonald, PLLC relating to the A.M.L. guardianship matter. The law firm billed $1,766.00 for work performed between April 10, 2013 and October 9, 2013.

2.11 Due to her employment with Regeimbal, McDonald, PLLC, Ms. Surface was providing direct legal services in the A.M.L. guardianship matter, in lieu of seeking the provision of these services from another law firm. In advance of incurring attorneys fees, court approval was not sought by Ms. Surface allowing Regeimbal, McDonald, PLLC to provide direct legal services in the A.M.L. guardianship matter.

3. VIOLATIONS OF THE STANDARDS OF PRACTICE

3.1 Based on the facts set for the in paragraph 2.1 through 2.11, Respondent's conduct constitutes grounds for discipline pursuant to former Standard of Practice (SOP) 403.1, as well as current SOP 406.1, 406.2, 406.3, and 406.4 which provide in pertinent part:

> **403.1** The guardian shall avoid self-dealing, conflict of interest, and the appearance of conflict of interest. Self-dealing or conflict of interest arise when the guardian has some personal, family or agency interest from which a personal benefit would be derived. Any potential conflict of interest shall be disclosed to the court immediately. (Effective to January 9, 2012)
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> **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.
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> **406.2** There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.
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> **406.3** A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4. (Revised 1-9-12)
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> **406.4** The role of a guardian is primarily that of a decision-maker and coordinator of services. The guardian or agency (or an entity in which a guardian has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval the guardian must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical. (Revised 1-9-12)

3.2 Based on the facts and violations set forth above, Holly Surface's conduct

constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503 that 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 503.4 Violation of the oath, duties, or standards of practice of a professional guardian.

4. DISCIPLINARY SANCTIONS AND REMEDIES

Based on the foregoing, it is requested that Respondent be found in violation of the regulations cited above and that disciplinary sanctions, remedies, and costs, including attorney fees and other provable expenses, be imposed on the Respondent in accordance with the Disciplinary Regulations.

DATED this _____ day of July, 2014.

Certified Professional Guardian Board

By:

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Carla A. Montejo
Guardian Investigator