

**CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD**

**Constance O'Hara, CPG No. 11396,**

Respondent.

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**CPGB No. 2012-012**

**AGREEMENT REGARDING  
DISCIPLINE AND STIPULATED  
FINDINGS**

***Disciplinary Regulation 514***

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Respondent Constance O'Hara, Certified Professional Guardian (CPG) No. 11396; and the Certified Professional Guardianship 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 Constance O'Hara and Castlemark Guardianship, have violated Standards of Practice Regulations, resulting in this disciplinary proceeding before the Board. Ms. O'Hara was a designated guardian for Castlemark during some of the period covered in this grievance. This Agreement is a resolution of the disciplinary proceedings involving Ms. O'Hara and shall become effective after all parties have signed the Agreement. The Agreement will be a part of each parties' respective certified professional guardian files and will be a public record subject to public access.

## 1. JURISDICTION

1.1 At all times relevant herein, Constance O’Hara, CPG No. 11396, was a certified professional guardian (CPG) pursuant to General Rule (GR) 23. At the time of appointment, Constance O’Hara was one of two designated certified professional guardians for Castlemark Guardianship Services, Inc., CPGA No. 5128.<sup>1</sup>

1.2 A “designated CPG” is responsible for the actions of the agency for which they serve as designated CPG. Certification Maintenance Regulations 702.2.

1.3 At all times relevant herein, Castlemark Guardianship Services, Inc.,<sup>2</sup> CPGA No. 5128, was a certified professional guardian agency (CPGA) pursuant to General Rule (GR) 23.

1.4 All professional guardians and professional guardian agencies who practice in the state of Washington are subject to the rules and regulations established pursuant to GR 23.

1.5 The 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.

### **GR 23 Rule for Certifying Professional Guardians – Certified Professional Guardianship 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.

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<sup>1</sup> Ms. O’Hara terminated her employment with Castlemark Guardianships & Trusts on August 31, 2014.

<sup>2</sup> In approximately July 2012, Hallmark Care Services, Inc. acquired Castlemark Guardianship Services and continues to do business as “Castlemark Guardianships & Trusts.”

## 2. STATEMENT OF FACTS

2.1 On or about April 4, 2012, the Board opened Certified Professional Guardianship Board (CPGB) Grievance No. 2012-012 regarding the conduct of Constance O'Hara and Castlemark Guardianship Services. The grievant is J.C.'s wife who has filed multiple grievances with the Board since her initial grievance. All of the grievances, however, have substantially similar issues so that they are appropriately considered together.

2.2 Ms. O'Hara was hired by Castlemark Guardianship in August, 2011, and worked for the agency to September, 2014. She did not work for the agency for a period of 2013, during which time she did not serve as guardian for any clients. During the time that Ms. O'Hara worked for Castlemark as a designated guardian she experienced numerous occasions when the agency did not include her in its decision-making processes. She did not have any information about many of the matters presented in the grievance. Once Ms. O'Hara was aware of irregularities in the practices of the agency she did not resign her position nor did she bring these to the attention of a court or the Certified Professional Guardianship Board.

2.3 The incapacitated person J.C. had vascular dementia and a history of psychiatric hospitalizations for treatment among other complicated medical issues. There had been a number of domestic violence incidents between J.C. and his wife, apparently related to J.C.'s dementia and related mental illnesses. Following an involuntary commitment in 2010, J.C. was moved to a nursing home for care.

2.4 Wife acted for J.C. under a valid power of attorney and applied (and received approval) for long-term care assistance from DSHS for J.C. Wife continued to live in the family home, and DSHS included a spousal allocation in its awards. Wife paid J.C.'s participation to the care facility and other expenses as designated in the DSHS award letter.

2.5 In late 2011, Wife became unwilling to serve any longer as J.C.'s power of attorney. Because no other family member resided nearby, the court appointed Castlemark as guardian for J.C. on January 10, 2012. J.C. was immediately assigned to Ms. O'Hara's caseload.

2.6 **Court-Approved Budget for J.C. Included Payment of Spousal Allocation.** J.C. had three sources of income: his Social Security benefit; a pension from Washington Department of Retirement Systems (DRS); and a Veterans Administration (VA) pension.<sup>3</sup> All three payments had been direct deposited into J.C.'s and Wife's joint checking account. After its appointment as guardian, Castlemark directed J.C.'s social security benefit to be deposited into the guardianship account. Wife continued to receive the DRS and VA pensions.

2.6.1 The court approved Castlemark's initial proposed budget, disbursements, and personal care plan on May 10, 2012. The court ordered Castlemark to pay J.C.'s participation, medical insurance, personal needs allowance, guardian fees, and spousal support per the approved budget. The DRS and VA pensions that Wife received directly did not fully satisfy the DSHS spousal allocation, so CPGA was to pay Wife the difference from the Social Security payment it received.

2.6.2 At no time did Castlemark petition the court for instructions to pay any household expenses, and the court entered no such order. Wife made all the payments for the mortgage on the family home, utilities, food, her medical insurance and other household expenses from her spousal allocation. There is no evidence that she ever failed to do so.

2.6.3 Castlemark received J.C.'s Social Security benefit for the first time on or about March 5, 2012. The Social Security benefit was consistently deposited between the first and the

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<sup>3</sup> The Social Security benefit was \$1,539/month; the pension from Washington Department of Retirement Systems was \$1,676; and the Veterans Administration pension was only \$251. The amounts of these separate benefits changed in subsequent years due to cost of living increases.

third day of each month thereafter. Castlemark commonly paid the difference in the spousal allocation at least one or two weeks after receipt of J.C.'s Social Security benefit.

**2.6.4** Castlemark also failed to make the spousal payment for even longer periods of time. For example, Wife did not receive her allocation for December 2012, in part because of her travel to California. However, Wife did not receive the payment for December 2012 until February 4, 2013; payments for January and February 2013 until February 25, 2013; and her payment for March until March 18, 2013.

**2.6.5** In 2014, Castlemark changed the payment of the DRS and VA pensions from Wife to itself.<sup>4</sup> Castlemark received the first deposit of the DRS pension in the amount of \$1,676.48 on April 4, 2014. The smaller VA pension for \$258.83 was not transferred until the next month on May 2, 2014.

**2.6.6** Although Castlemark now had control over all of J.C.'s income, it failed to pay the court-ordered spousal support of \$2,682.10 from April to September 2014.<sup>5</sup> CPGA paid Wife \$750.62 on April 8 and \$1,617.78 on April 14. These amounts were short of the full allocation by about \$300. Despite the delays in receiving her support, Wife managed to pay the April mortgage of \$909.62.

**2.6.7** On May 6, 2014, Castlemark paid Wife \$690.47 less than the DSHS allocation.<sup>6</sup> On June 10, Castlemark paid Wife \$1,087.49 less than the DSHS allocation. In July, Castlemark issued checks on July 3 and July 18 for the spousal allocation, then immediately placed a stop

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<sup>4</sup> Guardian's report dated April 7, 2014 reflects a change in the distribution of J.C.'s income, but states no reason for making the change. Wife contends that she received no notice of this modification. No certificate of service/mailed appears in the court docket. The CPG states she believes that the annual report was mailed to the wife.

<sup>5</sup> Based on Castlemark's proposed budget dated April 7, 2014.

<sup>6</sup> Wife contends that Castlemark was to have made the May mortgage payment, and Castlemark asserts the opposite. Because Castlemark had control over the bulk of J.C. income in April, Castlemark should have either paid the full DSHS allocation to wife so she could make the payment or deduct the amount of the mortgage payment from the allocation, but then make the payment itself.

payment order on each of them leaving Wife with no support until August 5, 2014. Castlemark's next payment on September 9, 2014, was \$2,000 less than the court-ordered spousal support. According to the Castlemark's budget presented to the court, total spousal support for this six-month period should have been \$16,092.60; however, Castlemark paid only \$7,815.08 – less than half of the court-ordered amount.

**2.7 Payment of J.C.'s Expenses.** The court-approved budget for all years 2012-14 ordered Castlemark to pay J.C.'s participation, medical insurance, and personal needs expenses.

**2.7.1** Castlemark failed to pay J.C.'s medical insurance for June through October 2012, resulting in a past due balance of \$886.95. Castlemark paid the past due amount on November 13, 2012, and continued to pay the medical insurance at least monthly after that.

**2.7.2** Castlemark had budgeted \$62.79 for J.C.'s personal needs allowance beginning October 2013. Castlemark failed to pay any allowance for three different months<sup>7</sup> in the succeeding twelve months. All other payments in this period were less than the budgeted amount resulting in a \$300 shortfall to J.C. for the year.

**2.7.3** As stated above, Wife paid all household expenses until April 2014 when Castlemark took control of all J.C.'s income. Castlemark failed to timely pay Wife the court-ordered spousal support resulting in her check for the mortgage being returned NSF. Castlemark made a second installment on April 14, 2014, and Wife was able to make the mortgage payment before the end of the grace period on the 17<sup>th</sup>.

**2.7.4** In May 2014, Castlemark failed to make the court-ordered spousal support payment to Wife and also failed to pay the mortgage. Castlemark failed to correct its mistake and allowed the mortgage to run a month late until August 26, 2014, when it finally made up the missed payment.

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<sup>7</sup> July 2014, February 2014, December 2013.

**2.8 Late Filing of Reports.** Castlemark failed to timely file the initial inventory and personal care plan within three (3) months of appointment. Then again, CPG failed to timely file the first annual report. In both instances, the court sent CPG a Notice of Noncompliance before CPG filed and obtained approval of the reports.

**2.9 Expired Letters of Guardianship.** Castlemark failed to maintain current Letters of Guardianship.

**2.9.1** Initial letters issued on the date of appointment, January 10, 2012, expired on May 1, 2012. New letters were not issued until May 30, 2012.

**2.9.2** The newly issued letters expired on May 10, 2013. Castlemark did not receive new letters until August 7, 2013.

**2.9.3** The letters then issued expired on May 10, 2014. Castlemark did not obtain new letters until June 3, 2014.

### **3. VIOLATIONS OF THE STANDARDS OF PRACTICE**

The Board hereby incorporates by reference the facts set forth in paragraphs 1.1-1.4, 2.1-2.9, and all subparagraphs contained therein. The Board hereby finds that Respondent Castlemark, and as designated guardian, Respondent O'Hara have violated the following Standards of Practice:

#### **3.1 Guardian's Duty to the Court.**

**3.1.1** Based on paragraphs 2.6, 2.7, 2.8, 2.9, and all subparagraphs contained therein, the Board finds that Respondent failed to perform its duties and discharge its obligations in accordance with the court's orders, Washington and federal law, as required by SOP 401.1, which provides in pertinent part:

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington and federal law and the requirements of the court.

### **3.2 Guardian's Duty to Manage the Estate.**

3.2.1 Based on paragraphs 2.6, 2.7, and all subparagraphs contained therein, the Board finds that Respondent failed to manage J.C.'s estate competently and to provide for J.C.'s needs, as required by SOP 409.1 and 409.4, which provide in pertinent part:

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.

3.2.2 Based on paragraphs 2.6, 2.7, and all subparagraphs contained therein, the Board finds that Respondent failed to consider the needs of J.C.'s dependent for support or maintenance as required by SOP 409.5, which provides in pertinent part:

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

### **3.3 Grounds for Discipline.**

Based on the facts and violations set forth above, Respondents' conduct constitutes grounds for discipline pursuant to Disciplinary Regulation (DR) 503 that provides in pertinent part:

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

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

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

The Board may impose discipline, sanctions, costs and other remedies upon a finding of a violation of the Standards of Practice. 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.** DR 515.1.4.1 identifies aggravating factors that may be considered in imposing a sanction. Aggravating factors found were a pattern of misconduct, multiple offenses, and the vulnerability of both J.C. and Wife.

**4.2 Mitigating Factors.** DR 515.1.4.2 identifies mitigating factors that may be considered in imposing a sanction. For Respondent O'Hara individually, mitigating factors considered in these grievances include, but are not limited to, absence of a prior disciplinary record and cooperation with the disciplinary proceedings.

#### 5. PRIOR RECORD OF DISCIPLINE

Respondent has no prior record of discipline with the Board.

#### 6. DISCIPLINARY SANCTIONS AND REMEDIES

Pursuant to its DR 515, any disciplinary sanction or remedy imposed by the Board on a certified professional guardian is a disciplinary sanction.

**Letter of Admonishment.** The Board hereby imposes a Letter of Admonishment on Respondent Constance O'Hara, individually, as the sole remaining designated agency guardian. Pursuant to CPGB Regulation 515.2.4, a letter of Admonishment is generally appropriate when a professional guardian engaged in professional misconduct incompatible with the standards of practice and not rising to the level justifying a reprimand. This Agreement constitutes the Letter of Admonishment and shall be placed in the Board's disciplinary files for the Respondents and is

open to public access and disclosure. Notice of the discipline imposed is sent to all superior courts in the state of Washington.

## **7. VIOLATION OF AGREEMENT**

**7.1** Failure to comply with the terms of this Agreement may constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, failing to follow court orders and procedures, to exercise fiduciary responsibility for any incapacitated person under her care, to improperly advance fees, and to bill for administrative tasks.

**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(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 DR 519.

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

## **8. NOTICE**

The Board shall retain this Agreement in Respondents' 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**

Respondents acknowledge that they have the right to individual counsel for representation in this disciplinary matter, at their 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, Respondent waives 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:**

*CO'Hara*  
Constance O'Hara, CPG No. 11396

12-28-15  
Date

**APPROVED AND ORDERED BY THE  
CERTIFIED PROFESSIONAL GUARDIAN BOARD**

This 20 day of Jan, 2016

*James W. Lawler*  
The Honorable James W. Lawler  
Chair, Certified Professional Guardian Board