

From: Mindi Blanchard
To: [Rood, Kim](#)
Subject: Comments re regulation changes
Date: Monday, September 04, 2017 10:43:51 AM

AOC Comment: “These sentences are not new.” These sentences are in the current regulation.” It is my understanding that we are looking at updating the current regulation, so if there are sentences that are commented upon that are in the current regulation and also in the WINGS updated regulation, that doesn’t mean that they don’t need to be re-evaluated and possibly changed.

AOC Comment: “A “neutral third-party” is defined as one who has no financial, or personal interest in a dispute. To our knowledge, no member of the AOC staff has a financial or personal interest in guardianship grievances. AOC staff members are committed to protecting the public from unethical or dangerous practices that can occur in guardianship practice. Any evidence that a member of AOC staff has a financial or personal interest in a guardianship grievance should be shared with the Board. It should be noted that involving an outside party to put grievances in writing would potentially compromise the privacy of both the grievant and the guardian.” The point Bridge Builders is trying to make is that it has been obvious to CPGs that the AOC is not an impartial third-party when it comes to grievances.

AOC Comment: The Board’s regulatory process is modeled after the regulatory process for the Washington State Bar Association and Licensed Practice Officers. Both only allow appeals to the Supreme Court. The Washington Supreme Court has exclusive authority to administer discipline for attorneys, LPOs and professional guardians. The Supreme Court has appointed the CPG Board to regulate professional guardians.

Most CPGs do not make anywhere near as much money as attorneys and Licensed Practice Officers.

AOC Comment on Statute of Limitations: See page 71.

My understand regarding page 71 is that a person with a disability falls under the exception. Many times, it is not a person with a disability who is filing a grievance, it is a person with capacity who has a complaint. My liability insurance company has said that 80% of lawsuits/grievances are frivolous. CPGs are not law enforcement and we are not attorneys.

AOC Comment on recommending the change from two years to three years.

We stand by our comment.

AOC Comment: Guardianship practice requires knowledge in many different areas. Board members are selected for their experience and subject matter expertise in one or more of these areas. Each member brings a perspective that informs the discussion.

We still emphatically say that no one can understand the nuances of guardianship who has not actually practiced as a professional guardian for several guardianships and for several years.

AOC Comment: The current rule does not limit the number of terms a member may serve thus members can currently serve 9, one year terms. Disciplinary members have a learning curve. The longer they serve, the more experience they obtain. Also their ability to serve should only be limited by their ability to serve as a board member.

We still stand by our response. One cannot have substantial experience in the industry unless one has actually worked in the industry.

AOC Comment: In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of professional guardians. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Just as CPGs must have access to the private and confidential records of the people they serve, the CPG Board must have access to the private and confidential records of CPGs. Private information is handled in a safe and secure manner and is only shared on a need to know basis.

We are not convince that a large number of CPGs are a danger to the public. We request hard data

showing the assertion to be true for CPGs in Washington State. Also, “need to know” needs to be defined as that can be open to much interpretation.

AOC Comment: Virtually all parties working closely with the elderly, persons with developmental disabilities and mental illness have noted that the overwhelming majority of abuse incidents remain unreported, because individuals often fear retaliation. Entities working to protect persons with disabilities, must weigh the value of receiving an anonymous report that could ultimately protect the welfare and safety of an IP against the potential harm to the reputation of the person complained about. Having the name of the complainant, doesn’t change the complaint. The right to face one’s accuser is a criminal law matter that generally refers to face-to-face confrontation with witnesses offering testimonial evidence against the accused in the form of cross-examination during a trial. Please note that the proposed rule would permit the CPG to make a motion to the Disciplinary Committee Chair to reveal the identity of the grievant for good cause. So, what you are saying is the CPGs have to try to defend themselves without knowing who initiated the grievance. I am sure that there are ways to protect an individual under guardianship who initiates the grievance during and after the grievance process and still provide due process to the CPG. If the individual who is a friend of family member filing the grievance finds any retaliation from a CPG, they can notify the grievance committee, who should then act. I would like to see hard data that CPGs are the ones who retaliate against a client or client’s family. I have read stories to this effect but they have been stories from other states. These types of changes need to be made using real data to support this claim.

AOC Comment: Virtually all parties working closely with the elderly, persons with developmental disabilities and mental illness have noted that the overwhelming majority of abuse incidents remain unreported, because individuals often fear retaliation. Entities working to protect persons with disabilities, must weigh the value of receiving an anonymous report that could ultimately protect the welfare and safety of an IP against the potential harm to the reputation of the person complained about. Having the name of the complainant, doesn’t change the complaint. The right to face one’s accuser is a criminal law matter that generally refers to face-to-face confrontation with witnesses offering testimonial evidence against the accused in the form of cross-examination during a trial. Please note that the proposed rule would permit the CPG to make a motion to the Disciplinary Committee Chair to reveal the identity of the grievant for good cause. Again, how are CPGs supposed to defend themselves if they don’t know who has filed the complaint? Again, this is from anecdotal stories and stories from other states. We need data with numbers showing how often this actually happens in Washington State. Not general information from nationwide studies that lump all guardians into one category. I’m not saying that CPGs aren’t guilty at times, I’m saying that no one knows what percentage of CPGs in Washington State are problems and what percentage of lay guardians in Washington State are problems.

AOC Comment: In performing its mission, the Board must weigh the need to protect the public from unethical and dangerous practice against the privacy interest of professional guardians. The right to privacy is outweighed by the greater benefit of decreasing the risk to which the public is subject. Just as CPGs must have access to the records of the people they serve, the CPG Board must have access to the records of CPGs. Private information is handled in a safe and secure manner and is only shared on a need to know basis.

This sounds very much like a witch hunt. When someone becomes a CPG they should not have to give up their right to due process because something MIGHT not be unethical and dangerous. The AOC and CPGB need to provide hard data showing that this is an actual problem with Washington State CPGs.

AOC Comment: If a grievant submits additional evidence that supports a conclusion that the guardian may have violated a Standard of Practice or other rule governing the work as a Certified Professional Guardian, the CPGB’s rules direct an investigation of the grievance. It seems most appropriate to reopen the grievance given that the grievance was not pursued previously for insufficient information, which has been rectified. It is unclear what basis there would be for requiring that a new grievance be opened. There would then be multiple grievances opened for the same matter, skewing Board statistics.

I disagree. I believe that it would make the Board statistics much more clear to open a new grievance when a grievant provides additional evidence after the initial grievance has been closed. On review, the

Board could then determine if they need to change their processes if this is happening frequently.

AOC Comment: Current regulation 510.1.2 is provided below. This regulation does not refer to voluntary surrender. 510.1.2 Prior Board disciplinary action against the professional guardian may be set forth in a separate count of the complaint. Prior Board disciplinary action is a factor to be considered in determining any sanction imposed in a disciplinary action.

My comment is unchanged. I still feel with voluntary surrender, it is a waste of taxpayer dollars to continue to pursue the case.

AOC Comment: Both the current and proposed rules include a provision to consider prior disciplinary action. Prior discipline may show a pattern of behavior and can provide evidence of such behavior. In court, evidence may be excluded if the value of the evidence is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. This is a decision made on a case-by-case basis.

Only after it is determined that the grievance warrants disciplinary action should prior disciplinary action be added.

Looking at the statistics that are available to me, I count 28 CPGs who have open grievances. I do not know if any of these CPGs have had previous grievances that have been closed, whether those closed grievances were disciplined or they were dismissed, what level of [current] grievances they are (procedural problems where no client was harmed are less egregious than when a client is harmed). According to the CPGB website, there are currently 270 CPGs. That means that just about 10% of all CPGs have open grievances. **90% DO NOT** have open grievances. This does not provide data showing that the Washington State professional guardians as a whole are causing egregious problems.

This means that CPGs in Washington State will have their rights to due process stripped as well as some civil and constitutional rights because a very small percentage of CPGs who may or may not have made mistakes. We are to be treated worse than criminals and the AOC seems to think that is O.K. because, according to the AOC, the grievance process is not a “criminal” process. At least criminals get due process and their civil and constitutional rights are protected.

Until the AOC and the CPGB provide hard data showing that in Washington State a significant number of CPGs are abusing and exploiting their clients, this is no more than witch-hunting. The hysteria that is being whipped up by innuendo and stories regarding lay guardians or professional guardians from other states that may or may not be accurate is alarming. Most CPGs in Washington State do their best for their clients, sometimes under very difficult circumstances. I know that some have made some serious mistakes but they are the anomalies and that is what the grievance process was developed to address. Using the GAO report or stories from other states who do not have the same checks and balances that Washington State is not accurate information. Not distinguishing between the behaviors of lay guardians and of CPGs in your anecdotal stories also skews the data.

CPGs in Washington State are the guardians of last resort. Since the inception of the CPGB, it is no longer acceptable to solicit guardianships by self-petitioning except in very narrow circumstances set out by the Ethics Opinion that the CPGB posted some years ago. This means that we sometimes get appointed to guardianships where the clients are very difficult and/or there is a highly dysfunctional family/others situation involved. No one in the AOC and very few on the CPGB understand the difficulty of these guardianships because they have never actually been guardians. It's easy to be on

the outside with opinions on how a CPG might have done things differently but none of you have ever been in the middle of situations where you are supposed to uphold a client's requests and protect the client to the best of your ability but the client (due to cognitive impairment) repeatedly sabotages your efforts and/or family or others do their best to sabotage the your efforts and then complain to the AOC that the CPG isn't doing his/her job correctly when something unpleasant happens.

CPG education and support are the keys for ensuring a high quality program. From the comments that I hear, the Certification Program falls very short of providing the type of education that individuals interested in becoming CPGs need to be successful. The fact that the attrition is so high is very telling. If it was a quality program, individuals would take the entire program whether or not they decide to become certified because much of the information that should be taught would be beneficial to those in other fields. As to support for CPGs, there is none at this time. CPGs are on their own to try to figure out their responsibilities and how to navigate some very tricky situations.

I challenge the AOC and the CPGB to report actual data for Washington State that can be verified showing that egregious guardian abuse by CPGs in Washington State is a real danger. Even if you manage to provide it [which I doubt because no one has done any actual studies regarding Washington State CPGs that I can find], there are procedures that can be put into place to protect the vulnerable adults from retaliation, or perceived retaliation, that do not include stripping CPGs of their rights as citizens of this State and this country.

Mindi R. Blanchard

Mindi R. Blanchard, M.Ed., CPG
President
Bridge Builders, Ltd/ The Guardian Institute
PO Box 610
Sequim, WA 98382
(360) 683-8334