



Mindi R. Blanchard, M. Ed., CPG
President

Date: July 24, 2017

To: Certified Professional Guardian Board

From: Mindi R. Blanchard, M.Ed., CPG
Brenda Carpenter, CPG

RE: Proposed Revision of Disciplinary Regulation 500

The change that stands out the most to us is the lack of CPG Board involvement in the disciplinary process. It is as though the responsibility for disciplinary action has been taken away from the CPG Board and shifted to the AOC. It is our understanding that the CPG Board is responsible for oversight and discipline, not the AOC. This is of great concern to us; especially since in recent years the AOC has shown what we feel to be a bias against guardians. As far as we are aware, no one in the AOC has ever practiced as a professional guardian. At least a few of the CPG Board members are practicing guardians and can provide a view that those who have never actually practiced as professional guardians cannot know. When the CPG Board makes a decision, it has been discussed and there is a vote. When the AOC staff makes a decision, it is unilateral and not subject to any kind of scrutiny.

We are requesting that the CPG Board be as involved in the new regulation as it was in the old regulation.

The following is what we are commenting on:

In 501.1 of the proposed Regulation it states, "To set out the due process protections and other procedures that allow the professional guarding and the public to be protected." I looked up the legal definition of "due process" and this is what I've found:

"A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property. Also, a constitutional guarantee that a law shall not be unreasonable, Arbitrary, or capricious.

The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. The DUE PROCESS CLAUSE of the Fifth Amendment, ratified in 1791, asserts that no person shall "be deprived of life, liberty, or property, without due process of law." This amendment restricts the powers of the federal government and applies only to actions by it. The Due Process Clause of the Fourteenth Amendment, ratified in 1868, declares, "[N]or shall any

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State deprive any person of life, liberty, or property, without due process of law" (§ 1). This clause limits the powers of the states, rather than those of the federal government.

The Due Process Clause of the Fourteenth Amendment has also been interpreted by the U.S. Supreme Court in the twentieth century to incorporate protections of the Bill of Rights, so that those protections apply to the states as well as to the federal government. Thus, the Due Process Clause serves as the means whereby the Bill of Rights has become binding on state governments as well as on the federal government."

We don't know where the writer(s) of the proposed regulation got their definition of "due process" but we see a glaring lack of "due process" in the proposed regulation.

501.3 Grounds for Disciplinary Action

At issue: "Violation of or noncompliance with applicable violations of statutes, fiduciary duties, standards of practice, rules, regulations, any requirement governing the conduct of professional guardians and any other authority applicable to professional guardians."

Response: This phrase makes this change too vague and runs the risk of allowing the AOC and Disciplinary Committee to overstep its authority and appears that the change is to allow for anything else that could be thought of. This is not a fair process.

At issue: Commission of any act that constitutes a felony, a misdemeanor or gross misdemeanor involving moral turpitude, whether or not a conviction results.

Response: This violates a professional guardian's right to be considered innocent until proven guilty. Punishing a professional guardian for an act of which they have not been legally convicted, is beyond the authority of the AOC or the CPG Board and violates due process.

501.5 Definitions

At issue: "Grievance" ... If the grievant is unable to submit a grievance in written form due to a disability or inability to communicate in written language, it may be communicated orally to AOC Staff.

Response: We object to the AOC staff being nominated as accepting a verbal grievance. The complaint should be communicated to a neutral third party and that third party would put it into writing for the grievant.

At issue: No statute of limitation or other time limitation restricts filing a grievance of bringing a proceeding under these rules...

Response: Even criminal acts, except for murder, have limitations and time statutes. No professional guardian should have to worry about a complaint being resurrected ten, twenty, thirty or forty years later.

502.1 Restriction on Representing Respondents

At issue: The change from two years to three years.

Response: There is no reason given for the addition of a 3rd year of separation. It is an arbitrary and unnecessary change to the current rule.

502.2 Disciplinary Committee

At issue: Membership. The Chair appoints a Disciplinary committee of three to four members from among the Board members. **At least one of the members must have substantial experience in guardianship.**

Response: The current rule states "At least one member must be a certified professional guardian and at least one member must be an attorney or judicial officer." No one who has never practiced as a professional guardian understands the challenges and nuances of guardianship. This new rule is not appropriate representation for professional guardians.

At issue: **A board member may serve as a Disciplinary Committee member as long as the member is on the board.**

Response: That could be as long as nine years. That is far too long. The current rule is that each board member serves one year. We see no reason to change this rule.

502.5 Respondent Certified Professional Guardian

At issue: Again, the new rule has extended the amount of time a prior board member or AOC staff has to wait before representing a professional guardian.

Response: We feel that the current rule should be kept.

At issue: **Restriction on Charging Fee to respond to a Grievance. A respondent CPG may not seek to charge a grievant or an incapacitated person's estate a fee or recover costs from a grievant or incapacitated person's estate for responding to the CPG Board regarding a grievance.**

Response. We feel that a formal hearing should be required to determine if fees can be charged on a grievance. The proposal would allow frivolous grievances to continue unchecked while the professional guardian bears the financial burden of defending him/herself.

At Issue: **Medical and Psychological Records. A respondent CPG must furnish written releases or authorization to permit access to medical, psychiatric, or psychological records of the CPG and the incapacitated person as may be relevant to the investigation or proceeding."**

Response: We feel that this is a violation of our right to privacy without due process. A hearing needs to be required to determine if this is necessary on a case-by-case basis. The CPG Board and/or the AOC should not be allowed to arbitrarily determine that this information is needed.

505.1 Filing of Grievance

At issue: The identity of the person bringing the grievance is disclosed unless the person submits a written request for confidentiality that explains his or her reasons for not wanting his or her identity disclosed, and which the Disciplinary Committee approves. At the discretion of the Disciplinary Committee Chair, the grievant's identity may be revealed for good cause.

Response: Where is the due process in this? Under no circumstances should a grievant have their identity protected. A CPG should have all relevant knowledge regarding a grievance so that they can prepare and respond to a grievance with all available resources. Not knowing who the grievant is would undermine the CPG's ability to put the complaint into context and would hamper the CPG's ability to defend him/herself.

502.2 Investigation of Grievance

At issue: Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance. The unwillingness of a grievant to continue the grievance; the withdrawal of the grievance, a compromise between the grievant and the respondent; or restitution by the respondent.

Response: Where is the due process in this? This is treating CPGs as though they are guilty even when the issue is resolved. The CPG Board and the AOC should not have this power.

At issue: The section regarding investigation into alleged acts of misconduct by a CPG deferred by the Chair of the Disciplinary Committee or AOC staff with the approval of the Disciplinary Chair...

Response: Where is the CPG Board in this section? Are they deferring their responsibilities to the Disciplinary Committee and AOC Staff? Nothing should be decided without CPG Board approval.

At issue: The respondent CPG must promptly respond to any inquiry or request made under these rules for information...

Response: This needs to be defined. It is too vague. How long is "promptly?"

At issue: Furnish in writing, or orally if requested, a full and complete response to inquiries and questions.

Response: Everything needs to be in writing. Orally is not acceptable.

At issue: Permit inspection and copying of the CPG's business records, files and accounts; furnish copies of requested records, files and accounts; and furnish written releases or authorization if needed to obtain document of information from third parties.

Response: Again, this is a privacy violation and should require a hearing to determine the necessity of this information being provided.

505.3 Privileges

At issue: Confidential Information. **A CPG may not assert Confidentiality under the Standards of Professional Conduct or other prohibition on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation...**

Response: We interpret this as stripping CPGs and possibly their clients of important rights and should not be allowed.

506.2 Dismissal of grievance by Disciplinary Committee

At issue: **Review of Dismissal. A grievant may request review of dismissal of the grievance if additional evidence has been obtained since the filing of the grievance.**

Response: If a grievance has been dismissed, it should not be allowed to be re-opened at the request of the grievant or anyone else. If a grievant provides enough additional information for a new grievance, then a new grievance should be opened. A grievance should not be re-opened and certainly not by the Chair of the Disciplinary Committee. It should be the CPG Board's responsibility to review the evidence.

506.3 Response to Grievance

At issue: **The Disciplinary Committee Chair or AOC shall make a determination regarding whether to grant the request for extension...**

Response: This should be the CPG Board's responsibility.

507 Resolution without complaint

At issue: No CPG Board involvement.

Response: The CPG Board should provide approval as it currently stands under 506.5

507.2 Settlement Agreements

At issue: **Must state that the Settlement Agreement is not binding on the Disciplinary Committee as a final Statement of facts about the respondent's conduct...**

Response: Any agreement should be binding on both parties.

At issue: **An acknowledgement that the voluntary resignation may be permanent, including the statement, "I understand that my voluntary resignation may be permanent and that any future application by me for reinstatement as a CPG will consider the circumstances around the voluntary resignation including resolution of the pending disciplinary action."**

Response: A CPG may voluntarily resign at any time for any reason. A voluntary resignation is not an admission of guilt. However, the statement proposed assumes guilt.

At issue: ...except the AOC has the discretion to continue any investigations deemed appropriate under the circumstances to create a sufficient record of the respondent's actions for consideration in the event the respondent seeks certification at a later time.

Response: The filed grievance should be sufficient. We see no reason to use taxpayer dollars to continue to pay AOC staff to investigate something that has become a non-issue at the point of voluntary decertification. We feel that the current 510.1.2 is adequate.

508.2 Commencement of Proceedings

At issue: Prior discipline. Prior disciplinary action against the respondent may be described in the Complaint.

Response: The complaint should only address the current complaint on its own merit. Describing prior disciplinary action prejudices the investigation.

At issue: Amendment of Complaint. AOC may amend a Complaint at any time to add facts or charges.

Response: The AOC should not have this authority. The complaint should stand on its own merits. Each grievance should be processed and completed as submitted by the grievant.

508.3 Notice to Answer

At issue: #2 - ... original and one copy...

Response: The AOC can make their own copies. The CPG shouldn't have to supply them.

508.8 Discovery and Prehearing Procedures

Response: Should keep 511.12 of the current rule.

508.9 Participation at Disciplinary Hearing

Response: Should keep 511.11 of the current rule.

509.3 Revocation of Certification

At issue: The CPG shall turn over all client records and provide access to client accounts in a timely manner...

Response: Should be "pertinent copies of client records." Guardians need to keep their records in case a grievance is reopened.

Where is the AOC's accountability in all of this? This reads as though the AOC has uninhibited powers. The CPG Board is barely mentioned in this proposed rule. What recourse does a CPG have when an AOC staff is overstepping his/her authority? This needs to be brought into this rule as well. The CPG Board should be instructing the AOC, not the other way around.

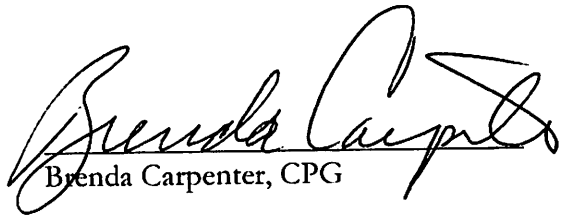
CPGs have an extremely difficult job. CPGs are expected to be experts in everything from the care of their clients, to experts in the law. If a CPG has a problem and gets advice from a professional only to learn that the professional gave poor advice, the CPG is still held accountable. This proposed rule treats CPGs as though they are guilty unless they can prove innocence. Anyone in the legal profession knows that it is far more difficult to prove innocence. Our country's laws don't work that way but it seems to us that the AOC wants to make CPGs the exception.

Where would vulnerable adults be without CPGs? It is no secret that there aren't enough guardians to fill the need. The costs and liability of be a CPG is climbing. How does the CPG Board expect to fill the need for low-income guardianships? We believe in being held accountable but the current proposal would make being a CPG too risky for most. There has to be appropriate accountability.

Respectfully Submitted:

A handwritten signature in black ink, reading "Mindi R. Blanchard". The signature is fluid and cursive, with the first name "Mindi" being the most prominent.

Mindi R. Blanchard, M.Ed., CPG

A handwritten signature in black ink, reading "Brenda Carpenter". The signature is fluid and cursive, with the first name "Brenda" being the most prominent.

Brenda Carpenter, CPG