

August 15, 2017

Honorable Judge Lawler
CPG Board Chair

Dear Judge Lawler and CPG Board Members,

I would like to thank you for the opportunity for the Washington Association of Professional Guardians (WAPG) 120 members to comment on Regulation 500 which is before the CPG Board. As WAPG President and Past CPG Board Member I realize the challenges facing both the CPG and Board.

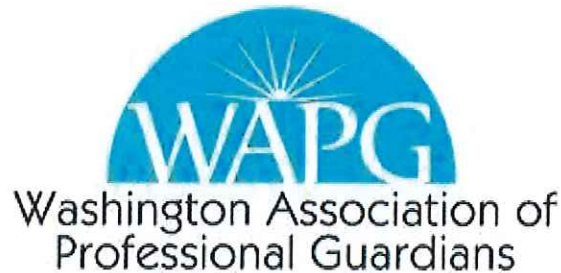
WAPG members are concerned that the CPG Board may be forcing CPG's to elect not to serve as guardians of the person or estate. This is based on the perception that the grievance process is cumbersome and ineffective as well as other factors. CPG's grievances have not been investigated or ruled upon for over a two or three-year span from time the grievance was filed and when a decision is made. This lag time between filing of the grievance and a decision being made creates mistrust from the CPG community as well as the public who have filed the grievance.

All other regulated professions have specific timelines that must be met to ensure the grievance is heard in timely manner. If the CPG Board cannot guarantee grievances are not resolved in a timely manner other options should be pursued and implemented. The CPG Board may want to consider moving the grievance process to another state agency that is well versed and grounded in the grievance process that can provide Washington CPG's the same due process and timelines as other professions practicing in Washington State.

WAPG would request that the CPG Board take in person testimony as in the legislative process before the adoption of Regulation 500 revisions.

Thank you,

Gary Beagle, NMG, CPG, OCPF
Washington Association of Profession Guardians
President



Certified Professional Guardianship Board

Regulation 500 Comments

501.1 – Purpose of Disciplinary Regulations

Comment - This regulation is concise and outlines the purpose in a clear and effective manner.

501.2 – Jurisdiction

Any certified professional guardian (CPG) permitted to engage in the provision of guardianship services in this state is subject to these Disciplinary Regulations. Jurisdiction exists regardless of the CPG's residency.

Comment – The regulation applies to all CPG's who are certified by the CPG Board and can be revised to make the regulation more concise and clear. An alternative may be: Any certified professional guardian (CPG) certified by the Washington State CPG Board and appointed by a Superior Court is subject to these Disciplinary Regulations.

501.3 – Grounds for Disciplinary Action

These rules govern the procedure by which a certified professional guardian may be subjected to disciplinary sanctions or actions for violation of the Certified Professional Guardian Standards of Practice or other regulations adopted by the Board.

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

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.

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

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

Comment – The above statement does not define what duties are to be followed. Would this apply to the Standards of Practice, Model Code of Ethics or Court Orders. The sentence does not add any additional authority to the regulations and is redundant.

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

Comment – The sentence does not add any additional authority to the regulations and is redundant.

Permitting a professional guardian's name to be used by an uncertified person or agency.

Comment -This sentence requires further definition to be more clear and concise. The regulation should not impede on a CPG's ability to utilize their designation in marketing and other collaborative efforts. An alternative may be: Permitting a Certified Professional Guardian's name or certification to be utilized by any person or agency that is not CPG Board Certified.

Misrepresentation or concealment of a material fact made in the application for certification.

Suspension, decertification, or other disciplinary sanction taken by competent authority in any state, federal, or foreign jurisdiction when such action was taken in connection with a professional guardianship or interaction with an incapacitated or vulnerable person.

Comment – The above section is not clear and concise. The following will require a definition if rule is adopted with the current language.

- 1.) Sanction
- 2.) Competent Authority
- 3.) Foreign Jurisdiction

Assuming the goal of this section is for a CPG or CPG Agency that has been suspended and/or decertified in any federal, state or other certifying body will be subject to these regulations. If this is the correct goal this section leaves room for in interpretation.

Hiring, maintaining an office with, having on a Certified Agency's Board of Directors, or working for or together with any person who has been certification has been revoked or suspended as a disciplinary sanction, if the professional guardian has knowledge of such revocation or suspension. The Board upon application and approval may waive this provision. The Board may set conditions on a waiver.

Comment – This section is not clear and concise. The goal of this section should be further discussed to ensure the CPG and/or CPG Agency can determine what course of action should be elected to ensure compliance.

Willful disregard of a subpoena or order of a court, review panel, Board committee or the Board.

Making a false statement under oath.

Conduct demonstrating unfitness to work as a professional guardian, including but not limited to persistent or repeated violations of rules, standards of practice or regulations, or disciplinary actions.

Comment - The sentence does not add any additional authority to the regulations and is redundant. This section is already covered in section 501.1.

Working as a professional guardian while on inactive status.

Failing to cooperate during the course of an investigation as required by the Board's regulations.

Incompetence in the performance of the duties of a guardian.

Comment - A definition of incompetence is suggested. The CPG Board may want to consider how to deal with a CPG who has cognitive deficits and/or substance abuse issues.

Failure to appear for a scheduled court proceeding without good cause. Failure to comply with the terms of a signed Agreement Regarding Discipline.

Comment – An alternative may be: Failure to appear for a scheduled court proceeding without good cause or complying with the terms of an executed and accepted CPG Board Agreement Regarding Discipline.

501.4 - Definitions

"Contempt of Court" means:

Disorderly, contemptuous, or insolent behavior toward a Hearing Officer while conducting a hearing or other proceeding, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

Disobedience of any lawful judgment, decree, order, or process of the court or tribunal;

Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

Refusal, without lawful authority, to produce a record, document, or other object.

Comment - Contempt of Court should be determined by the court and not the CPG board. The CPG board should not be substituting its judgment for the court when it comes to a finding of contempt of court. This is a very complicated area involving civil rights and other rights where the court would have jurisdiction.

"Court" unless otherwise specified, means the Supreme Court of Washington.

Comment – The current CPG Board regulations does not allow for an appeal process outside of the administrative court process with only an appeal to the WA State Supreme Court. This limits the CPG's options for a resolution. All other state certification governing agencies allow for lower courts to rule on disciplinary and/or sanctions prior to being heard by the State Supreme Court. By not allowing for this process places an undue financial burden on the CPG to dispute any decision made by the CPG Board.

“Standard of Practice” means a model of established practice that is commonly accepted as correct.

Comment – Standard of Practice should mean SOP’s as promulgated by the board. The vague definition leaves this term open to interpretation.

502.2 DISCIPLINARY COMMITTEE

Function. The Disciplinary Committee performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include, but are not limited to investigation, review, making preliminary findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions.

Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not allow family, social, business or other relationships to influence their conduct or judgment.

Comment – It is recommended that should be changed to shall. The CPG Board members should be held to the same standards at the CPG’s that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.

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 guardianships. The Chair may change the appointment of members to the Disciplinary Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Disciplinary Committee.

Comment – It is recommended that all CPG Board Members appointed to the CPG Disciplinary Committee have substantial experience in guardianships. In all other national and state certification programs, a certified or licensed fiduciary complaint are reviewed by either other professional fiduciaries and/or individuals well versed in the regulation and process

Disciplinary Committee Chair. The Chair of the Board designates one member of the Disciplinary Committee to act as its Chair. The Chair should have experience serving in a judicial or quasi-judicial capacity.

Comment – This section anticipates that the disciplinary committee is a judicial proceeding which in most licensing or certification processes this is not presumed. Further discussion should be held that would identify the purpose of this section, criteria for degerming the chair and if this section is required.

502.3 CONFLICTS REVIEW COMMITTEE

Function. The Conflicts Review Committee (CRC) performs the functions provided under these rules, delegated by the Board or the Chair, or as necessary and proper to carry out its duties. These functions include but are not limited to investigation, review, making preliminary

findings, approving settlement agreements, officiating over hearings, and imposing disciplinary sanctions involving a Board member. Members should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Members should not

Comment – – It is recommended that should be changed to shall. The CPG Board members should be held to the same standards at the CPG's that they regulate. This would elevate any conflict of interest issues and/or appearance of a conflict of CPG Board Members.

502.5 RESPONDENT CERTIFIED PROFESSIONAL GUARDIAN

Right to Representation. A CPG may be represented by counsel at the CPG's own expense during any stage of an investigation or proceeding under these rules.

Restrictions on Representation of Respondent. A former Board member cannot represent a respondent CPG in any proceeding under these rules until three (3) years after leaving the Board. A former CRC member cannot represent a respondent CPG in any proceeding under these rules until one (1) year after the CRC has completed its work. A former AOC staff person shall not represent a respondent CPG in any proceeding under these rules for at least three (3) years after the date of separation from AOC.

Restriction on Charging Fee To Respond to 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 a grievance.

Medical and Psychological Records. A respondent CPG must furnish written releases or authorizations to permit access to medical, psychiatric, or psychological records of the certified professional guardian and the incapacitated person as may be relevant to the investigation or proceeding.

Comment – It is recommended that there be some standard for filing a grievance, and failing to meet that standard should subject the person filing the grievance to some penalty. While one does not want to produce a chilling effect on individuals who file a legitimate grievance, but a CPG should not be continually defending themselves against frivolous claims and/or grievances. The CPG is appointed for a reason and continually interacts with difficult family members, interested parties and other national guardianship groups. The CPG Board might consider the California Licensing Bureaus protocol in which not all grievances filed are fully vented through the process. In many grievances, the individual filing the grievance has had the issue fully reviewed and a ruling made by the court. The individual filing the grievance is unwilling to accept the court's decision and wants to continue the dispute through the grievance process at no cost to the individual filling the grievance. These grievances and/or issues should be dismissed if a court or other form of judication has resulted in a ruling by the court.

The assumption that only the CPG Board can rule on grievances involving Standards of Practice is no longer valid due to the recent Spokane Superior Court ruling and the Appellate ruling in which findings of fact were made based on the Standards of Practice.

The CPG Board has taken the position that a grievance allows for the review of all clients and procedures of the CPG or CPG Agency instead of reviewing the grievance and deciding based on that sole grievance. This tact as well as not reviewing the merit of the case at the onset of the filing of the grievance is reflected in the CPG Board's backlog of grievances. CPG's grievances have not been investigated or ruled upon for over a two or three-year span from time the grievance was filled and when a decision was made. This lag time between filing of the grievance and a decision being made creates mistrust from the CPG community as well as the public who have filed the grievance. All other regulated professions have specific timelines that must be met to ensure the grievance is heard in timely manner. If the CPG Board cannot guarantee grievances are not resolved in a timely manner other options should be pursued and implemented.

Release of Medical Records

Comment – It is recommended that this provision should allow for the CPG be to obtain consent form the client prior to blanketly giving the CPG Board the authority to access a client's records without limitation. If the client does not agree to the consent a CPG would be requested to obtain direction from the assigned court to proceed with the authorization and/or give limited authority to the CPG Board. This request is an invasion of a client's privacy and may be not warranted if the grievance is not dependent on the information. The CPG's Standard of Practice places this request in directly conflict with blanketly execute the release.

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