

Published for Comment:

The Certified Professional Guardian Board will continue its discussion of and consideration for adoption the following Standard of Practice during its meeting on October 14, 2013, 9 am, at the SeaTac Office Facility, 18000 International Blvd., Suite 1106, SeaTac, WA. Comments received by COB October 4 will be provided to board members.

Approved for Comment June 10, 2013. A previous comment period expired July 26, 2013.

Issues:

- Should individuals who have not been certified as professional guardians be allowed to own professional guardian agencies? If not, what should the Standard of Practice prohibiting ownership say? If yes, what mechanisms are needed to ensure adherence to guardian standards of practice?
- Who is responsible for the professional work of a certified professional guardian agency?

Background:

Guardian conduct is guided by standards of practice or rules of professional conduct and ethics which may not apply to non-guardians. Thus allowing non-guardians to own guardian agencies could allow individuals not bound by standards of practice to influence how guardians provide services to incapacitated persons. To clarify the necessity of professional guardians and non-guardians practicing in conformance with standards of practice in professional guardian agencies, as well as who is responsible for actions of the employees of a professional guardian agency, the Board is considering adoption of new Standard of Practice 413.

Proposed SOP:

413 Responsibilities of Certified Professional Guardian Agencies

413.1 Responsibilities of Owners, Managers, and Supervisory Professional Guardians

413.1.1 An owner of a professional guardian agency, and a professional guardian who individually or together with other professional guardians possess comparable managerial authority in a professional guardian agency, shall make reasonable efforts to ensure that the agency has in effect measures giving reasonable

assurance that all professional guardians in the agency conform to the Standards of Practice.

413.1.2 A professional guardian having direct supervisory authority over another professional guardian shall make reasonable efforts to ensure that the other professional guardian conforms to the Standards of Practice.

413.1.3 A professional guardian shall be responsible for another professional guardian's violation of the Standards of Practice if:

413.1.3.1 the professional guardian is an owner or has comparable managerial authority in the professional guardian agency in which the other professional guardian practices, or has direct supervisory authority over the other professional guardian, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

413.1.3.2 the professional guardian is an owner or has comparable managerial authority in the professional guardian agency in which the other professional guardian practices, or has direct supervisory authority over the other professional guardian and orders or, with knowledge of the specific conduct, ratifies the conduct involved.

413.1.3.3 the professional guardian is a designated certified professional guardian who has the final decision-making authority for an incapacitated person or their estate on behalf of the agency.

413.2 Responsibilities of a Subordinate Professional Guardian

413.2.1 A professional guardian is bound by the Standards of Practice notwithstanding that the professional guardian acted at the direction of another person.

413.2.2 A subordinate professional guardian does not violate the Standards of Practice if acting in accordance with a supervisory professional guardian's reasonable resolution of an arguable question of professional duty.

413.3 Responsibilities Regarding Non Guardian Employee Assistance

With respect to a non-guardian¹ employed or retained by or associated with a professional guardian:

413.3.1 an owner, and a professional guardian who individually or together with other professional guardians possess comparable managerial authority in a professional guardian agency shall make reasonable efforts to ensure that the agency has in effect measures giving reasonable assurance that the conduct of a

¹ A non-guardian is any individual not certified by the Certified Professional Guardian Board pursuant to its regulations and GR 23.

non-guardian employee is compatible with the professional obligations of the professional guardian;

413.3.2 a professional guardian having direct supervisory authority over the non-guardian employee shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the professional guardian; and

413.3.3 a professional guardian shall be responsible for conduct of non-guardian employee that would be a violation of the Standards of Practice if engaged in by a professional guardian if:

413.3.3.1 the professional guardian orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

413.3.3.2 the professional guardian is an owner or has comparable managerial authority in the professional guardian agency in which the non-guardian is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

413.3.3.3 the professional guardian is a designated certified professional guardian who has the final decision-making authority for incapacitated persons or their estate on behalf of the agency.

413.4 Professional Independence of a Professional Guardian

413.4.1 A professional guardian or professional guardian agency shall not share guardian fees with a non-guardian, except that:

413.4.1.1 an agreement by a professional guardian with the professional guardian's agency, partner, or associate may provide for the payment of money, over a reasonable period of time after the professional guardian's death, to the professional guardian's estate or to one or more specified persons;

413.4.1.2. a professional guardian who purchases the practice of a deceased, disabled, or disappeared professional guardian may, pursuant to the provisions of 413.4.1.1 pay to the estate or other representative of that professional guardian the agreed-upon purchase price;

413.4.1.3 a professional guardian or professional guardian agency may include non-guardian employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

413.4.2 A professional guardian shall not form a partnership with a non-guardian if any of the activities of the partnership consist of providing guardianship services.

413.4.3 A professional guardian shall not practice with or in the form of a professional corporation or association authorized to provide guardianship services for a profit, if:

413.4.3.1 a non-guardian owns a majority interest therein, except that a fiduciary representative of the estate of a professional guardian may hold the stock or interest of the professional guardian for a reasonable time during administration;

413.4.3.2 a non-guardian is a director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

413.4.3.3 a non-guardian has the right to direct or control the professional judgment of a professional guardian.

E-mail comments to Kimberly.bzotte@courts.wa.gov

Or mail comments to

Kimberly Bzotte

Guardian Program

Administrative Office of the Courts

P.O. Box 41170

Olympia, WA 98504-1170