

# Minutes

# Certified Professional Guardianship Board Meeting

Monday, October 20, 2014 (9:00 a.m. – 3:00 p.m.)

SeaTac Office Center, 18000 International Blvd., Suite 1106

SeaTac, WA

## Proposed Meeting Minutes

### Members Present

Judge James Lawler, Chair  
Judge Robert Swisher, Vice-Chair  
Commissioner Rachelle Anderson  
Mr. Gary Beagle  
Ms. Rosslyn Bethmann  
Dr. Barbara Cochran  
Ms. Nancy Dapper  
Ms. Emily Rogers  
Ms. Carol Sloan  
Mr. Gerald Tarutis

Commissioner Diana Kiesel

### Members Absent

Judge Sally Olsen  
Mr. Andrew Heinz  
Mr. Bill Jaback

### Staff

Ms. Shirley Bondon  
Ms. Carla Montejo  
Ms. Sally Rees  
Ms. Kim Rood

### Guest

#### 1. Call to Order

Judge James Lawler called the meeting to order at 9:15 a.m.

#### 2. Welcome and Introductions

Judge Lawler welcomed Board members and members of the public to the meeting. He introduced Commissioner Diana Kiesel of Pierce County who has been nominated to replace retiring Judge Olsen. Commissioner Kiesel attended the meeting as a guest as her appointment was pending. Emily Rogers has resigned from the Board, and a certified professional guardian (CPG) will be nominated for the resulting vacancy. Notice of the vacancy has been sent to the Washington Association of Professional Guardians (WAPG) and all CPGs in Washington State to recruit applicants.

#### 3. Chair's Report

##### Approval of Minutes

Judge Lawler asked for changes or corrections to the September 8, 2014 telephone conference proposed minutes. There were no changes or corrections.

**Motion:** *A motion was made and seconded to approve minutes from the September 8, 2014 meeting. The motion passed.*

##### Disciplinary Proceeding against Lori Petersen

Judge Lawler stated that the Supreme Court rendered a decision on July 3, 2014, that upheld the findings of fact and conclusion of law of the hearing officer. The Supreme Court remanded the case to the CPG Board to conduct a review of the proportionality of the sanction recommended for Ms. Petersen.

Ms. Petersen filed a Motion for Reconsideration that was denied because it was filed late. Ms. Petersen then filed a Motion to Extend Time to file her Motion for Reconsideration. The Supreme Court denied this motion also.

On September 25, 2014, the Supreme Court filed a Certificate of Finality of its Opinion. The Board will conduct the proportionality review in executive session.

### Correspondence

#### **GR 9 Request Submitted by Philip Talmadge on behalf of WAPG**

Philip Talmadge submitted a GR 9 Request to the Supreme Court Rules Committee to increase the number of CPGs serving on the Board; increase the size of the Board; require Board members to review grievances prior to staff involvement; and prohibit public disclosure of dismissed grievances. The Board has not been informed of any action by the Supreme Court Rules Committee regarding the request.

#### **Message to Shirley Bondon from Commissioner Velatequi**

Commissioner Carlos Velategui emailed Shirley Bondon on September 10, 2014, with concerns regarding the dismissal of guardianship petitions because courts are unable to locate either a CPG or lay guardian willing to take on guardianship cases. Commissioner Velategui has been gathering data from judges to determine the number of dismissals occurring. In his communication, he requested assistance from Shirley Bondon to collect the data. Ms. Bondon encouraged Commissioner Velatequi to explain his concerns to the Chair of the Superior Court Judges Association and request a broader discussion of the issue.

Other Board members indicated that they believed that guardianships had also been dismissed in Clark and Pierce Counties due to an inability to identify a qualified individual willing to serve as guardian. A Board member asked the Board to take the lead in brainstorming with other interested groups/parties in order to create non-monetary incentives that would encourage CPGs and lay guardians to accept challenging guardianships.

#### **4. Public Comment Period (Please see attached)**

#### **5. Staff Report**

##### Demonstration

On October 27<sup>th</sup> and 28<sup>th</sup>, the Conservator Account Auditing Program (CAAP) software used to submit guardianship accountings in Minnesota will be demonstrated at the AOC Office in Olympia. This accounting program is currently used by all guardians in Minnesota.

### Grievance Update

All grievances are tracked for all years, 2011-to current date. Total pending cases number 84. Out of these pending cases, 66 cases are currently under investigation. The remaining 28 are actively in the hearing or appeal process. Several cases are actively negotiating agreements regarding discipline.

There has been an increase in grievances. In the past, the office has received approximately 50 grievances a year. Staff is estimating that the office will receive about 65 grievances in 2014. The number of grievances submitted is increasing annually, although a large number of complaints are closed based on lack of jurisdiction or no actionable conduct.

The Office of Guardianship and Elder Services was without a grievance investigator for a year during which many grievances accumulated. Grievance investigators have focused on closing older cases. All 2011 grievances have been closed. There are approximately 8 open grievances from 2012 that the investigators are actively addressing. After resolving these cases, emphasis will be placed on 2013 and 2014 grievances.

In light of this increase, the office is considering ways of dismissing grievances more quickly. Many grievances are based on a lack of communication and/or misunderstanding, arising perhaps from a generational position of complete authority often taken by guardians certified prior to the UW Certificate Program. Education and improved listening skills for CPGs could greatly reduce the number of these types of complaints.

## **6. Draft Board Recusal Procedure**

On June 9, 2014, the Board directed staff to draft a recusal process for Board review. A draft of the proposed policy has been created. Much of the proposal was extracted from an advisory opinion by the Attorney General (AG). The Summary communicates the foundation of the recusal process

- a. Board members should fully disclose relationships with any and all individuals and organizations when matters involving those entities come before the board.

As an example, Dr. Cochrane is an employee of the University of Washington (UW). She feels she has a conflict of interest with regard to the contract AOC has with the UW and their CPG training program. Dr. Cochrane's relationship with the UW has been fully disclosed. She openly shares her knowledge regarding the CPG training program, however, reserves her opinions regarding the UW. This is an excellent example of a conflict of interest with a Board member that has been handled correctly.

- b. Board members should avoid participating in quasi-legislative matters involving their own specific, substantial, and readily identifiable financial interests, except where the financial interest is shared equally by other Board members.

CPGs serving on the Board have an inherent conflict of interest because they advocate for the interest of professional guardians. A board member who has a financial benefit in a Board matter must voice this conflict of interest and remove themselves from the issue.

- c. Board members should not participate in rulemaking when the organization in which they have a personal interest is the petitioner for the rule in question.

A member of the leadership of a professional organization where the Board regulates the professionals should not be invited to become a Board member. As an organizational leader, an individual will have a conflict of interest in most Board actions. In making decisions, Board members must understand that they do not have constituents. They serve on the Board to provide a specific perspective, however they do not represent any specific interest group. All members serve the public.

- d. Board members should not participate in grievances and complaints or other quasi-judicial proceedings involving individuals and organizations with which they are personally interested or where their impartiality might reasonably be questioned as a result of their association with those entities.

Conflicts of interest or the appearance of a conflict of interest should be disclosed to the Board to determine whether or not that Board member needs to withdraw from the discussion.

**Motion:** *A motion was made and seconded to request comments on the recusal policy. The motion passed.*

## **7. Executive Session (Closed to Public)**

## **8. Reconvene and Vote on Executive Session Discussion (Open to Public)**

### **Emerald City Update**

**Motion:** *A motion was made and seconded to adopt the Hearing Officer's findings and conclusion with the exception that costs be increased to \$20,000. The motion passed.*

### **Petersen Proportionality Analysis**

**Motion:** *A motion was made and seconded to approve the proportionality analysis of the Board; to impose a one year suspension; and to reduce the attorney fees and costs to \$7,500 in consideration of Ms. Petersen's expense of a monitor as provided herein. The motion passed.*

*The Board clarified that "suspension" means that Ms. Petersen may not act in the capacity of a certified professional guardian; shall accept no new cases; and shall relinquish all existing cases to another CPG. An independent monitor shall monitor Ms. Petersen for a 24-month period when she returns to work as CPG. The Standards of Practice Committee (SOPC) shall approve the monitor. Ms. Petersen shall bear the expense of the monitor.*

### **Applications Committee**

Commissioner Anderson presented all applications on behalf of the Applications Committee.

**Motion:** *A motion was made and seconded to conditionally approve Joy Brown's application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Theresa Doyle's application. The motion passed.*

**Motion:** *A motion was made and seconded to deny Brenda Johnson's application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Christine Mathes' application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Anna Miller's application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Maydee Murdock's application. The motion passed.*

**Motion:** *A motion was made and seconded to deny Robert Poindexter's application. The motion passed.*

**Motion:** *A motion was made and seconded to deny Jennifer Regeimbal's application. The motion passed.*

**Motion:** *A motion was made and seconded to conditionally approve Annemieke Van Der Werf Price's application. The motion passed.*

**Motion:** *A motion was made and seconded to deny Beth Willey's application. The motion passed.*

## 9. Wrap Up and Adjourn

Meeting adjourned at 1:40 p.m. Next meeting is November 17, 2014, teleconference, 8:00 a.m. to 9:00 a.m.

### Recap of Motions from October 20<sup>th</sup>, 2014 Meeting

Motion Summary	Status
<b>Motion:</b> <i>A motion was made and seconded to request comments on the recusal policy. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to adopt the Hearing Officer's findings and conclusions with the exception that costs be increased to \$20,000. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to approve the proportionality analysis for the Board; to impose a one-year suspension; to reduce the attorney fees and costs to \$7,500; to require a monitor for a 24-month period at CPG's expense after she returns to work as a CPG; and to have the monitor approved by SOPC. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Joy Brown's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Theresa Doyle's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to deny Brenda Johnson's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Christine Mathes' application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Anna Miller's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Maydee Murdock's application. The motion passed.</i>	Passed

<b>Motion:</b> <i>A motion was made and seconded to deny Robert Poindexter's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to deny Jennifer Regeimbal's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to conditionally approve Annemieke Van Der Werf Price's application. The motion passed.</i>	Passed
<b>Motion:</b> <i>A motion was made and seconded to deny Beth Willey's application. The motion passed.</i>	Passed

<b>Action Items</b>	<b>Status</b>
Request comments on the proposed Recusal Policy	In Process



CLAUDIA DONNELLY

Good morning:

In the past, I've talked about how guardians abuse vulnerable adults in WA State as well as across our country. I've also talked about how seniors have been isolated from family members and SOPs that say guardians can't do this. Here is a copy of the 2010 GAO report. How many of you think this is a big lie on the part of the Federal Government and guardian abuse never happens?

In late September, I found out who serves on the Advisory Board for the UW Guardian Class. I heard that people attending this class or managing this class have never heard that professional guardians isolate their wards from family members. Those of you on this Board, what do you talk about when you meet to discuss what needs to be taught/mentioned in these classes? Do you acknowledge that guardian abuse and isolation of seniors exists?

In February to April 2014, Ms. Bondon was asked to write a report – here it is – about vulnerable adults being isolated from family members. Did she or others ever give this Board a copy of that report? Why or why not? If you don't give any information to new guardians about abusive behavior or isolating seniors, what is the purpose of this class or this board? ~~Am I lying when I talk about guardian abuse or isolating a senior citizen from family members?~~ This is what Ms. Bondon wrote to the Program Chair at the UW:

*Here is an letter I got about California residents being isolated from family.*  
"Please note that the memo referenced by Ms. Donnelly does not state that guardians isolate their wards. In most instances, the report presents the opinions of family and friends of persons under guardianship. The following paragraph is an excerpt from the memo:

"Stakeholders submitted comments in a variety of formats. AOC staff summarized comments in an effort to narrow comments to the specific issue being addressed. Staff did not verify the accuracy of the comments received or engage in fact finding. The comments below are presented to show that the public believes there is a problem and to present examples of actual or perceived issues of isolation." Isn't that like calling the people who submitted those stories liars? Could that be construed as verbal abuse? Is someone going to apologize to those people whose loved ones have been isolated from them or is this acceptable behavior? What do you intend to do about this problem? Anything? The Board has an SOP that supposedly guardians are to adhere to. Do they? Am I lying about seniors being isolated from family members?

\* I believe it is 407.5

I know that the State Council on Aging will provide an agenda <sup>for their meetings</sup> if requested and supposedly post it. What about doing something like that for the class's advisory board?

Thank you.

# Proposed Guardianship Legislation

# Guardianship Complaint Procedure Proposed by the Elder Law Section of the WSBA

**RCW 11.88.120**

**Modification or termination of guardianship, complaint — Procedure.**

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for an interested person, based on a motion of a person representing themselves, or based on a written complaint, as described herein. The court may grant such relief as it deems just and in the best interest of the incapacitated person.

(2) (a) An unrepresented person may submit a complaint to the court. For purposes of this section, "complaint" shall refer to a written submission by an unrepresented person, who shall be referred to as the complainant. Complaints shall be addressed to one of the following designees of the court – the clerk of the court having jurisdiction in the guardianship, the court administrator or the guardianship monitoring program, and shall identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint shall also provide the complainant's address, the case number (if available) and the address of the incapacitated person (if available). The complaint shall state facts to support the claim. Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3b) By the next judicial day after receipt of a complaint from an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the court's designee clerk shall ensure the original complaint is filed and deliver the complaint request to the court.

(c) Within fourteen (14) days of being presented with a complaint, the court shall enter an order ordering one or more of the following:

i. To show cause, with fourteen (14) days notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint. ~~may (a) direct the clerk to schedule a hearing, (b)~~

ii. To appoint a guardian ad litem to investigate the issues raised by the complaint application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, ~~or (c)~~

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iii. To dismiss the complaint deny the application without scheduling a hearing, if it appears to the court that the complaint is without merit on its face, is filed in other than good faith, is filed for an improper purpose, regards issues that have already been adjudicated, or based on documents in the court file that the application is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

iv. To direct the guardian to provide, in not less than fourteen (14) days, a written report to the court on the issues raised in the complaint.

v. To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three (3) months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial or other harm as a result of the court's deferral of consideration.

vi. To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

~~(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.~~

~~(35) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.~~

(4) The Administrative Office of the Courts shall develop and prepare in consultation with interested persons, a model form for the complaint described in RCW 11.88.120(2)(a) and for the order that shall be issued by the court under RCW 11.88.120(2)(c).

(5) The Certified Professional Guardianship Board (CPGB) may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from CPGB shall be treated as a complaint under this section and the person who sent the complaint to CPGB shall be treated as the complainant. The court shall direct the clerk to transmit a copy of its order to CPGB. Any further action taken by CPGB shall be consistent with the court order.

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(6) In any court action under this section that involves a professional guardian, the court shall direct the clerk of the court to send a copy of the order entered under this section to CPGB.

# Legislation Limiting a Guardian's Ability to Limit Contact between an Incapacitated Person and Another Person



**EXECUTIVE SUMMARY AND PROPOSED STATUTORY LANGUAGE  
REGARDING PROPOSED CHANGES TO RCW 11.88**

**There have been complaints that guardians are isolating Incapacitated Persons from family members and friends. These complaints have been the impetus for proposing changes to the guardianship statutes.**

**I. PREVIOUS PROPOSED LEGISLATION**

In an effort to address the problems associated with guardians isolating Incapacitated Persons, in 2013 the Washington State Senate drafted proposed legislation (SB 5694) that would have changed RCW 11.88.

SB 5694 contained the following language:

No guardian, limited guardian, or standby guardian may prevent or limit contact between the incapacitated person and a family member without a court order authorizing such action: PROVIDED, That if a guardian has grounds to believe that contact with a family member or members should be limited to protect the incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 71.34.020, the guardian may prevent or limit contact without a court order for the period necessary to prepare and file a petition for a vulnerable adult protection order or other court order conveying this authority.

**II. PROBLEMS WITH SB 5694 AND  
PROPOSALS TO ADDRESS THESE ISSUES**

1. Currently, guardians are applying the standard of the “best interests” when deciding whether to isolate an Incapacitated Person. This standard is too subjective and not well defined. This raises due process and equal protection issues. Similarly situated individuals must be treated equally.

**PROPOSAL:** Guardians can interfere with social relationships only if such isolation is necessary to achieve “protection from substantial harm”. The subjective “best interests” standard should only be applied by guardians when the standard applies to assuring the rights of the Incapacitated Person. When the curtailment of constitutional rights is at issue, the higher standard of “protection from substantial harm” should apply and be used by guardians.

2. The standards used by guardians when making decisions to isolate Incapacitated Persons from others, including family members, are not clear and are based on the subjective judgment of the “best interest” standard as determined by each guardian, thus resulting in unequal application to Incapacitated Persons.

**PROPOSAL:** Guardians can limit contact with any other person only if such restrictions are necessary to achieve “protection from substantial harm” to the Incapacitated Person.

3. Currently, there are no written procedures for guardians to follow when deciding whether to isolate Incapacitated Persons from others.

**PROPOSAL:** Written protocols are needed to establish how “protection from substantial harm” is to be determined and applied.

4. There is a lack of notice to persons who are involved.

**PROPOSAL:** Guardians should be required to give formal written notice to all persons involved before limiting contact with the Incapacitated Person.

5. There is a lack of criteria for courts to follow when issuing an “isolation order”.

**PROPOSAL:** Before issuing an isolation order, a court must enter findings of fact and conclusions of law to support an order that the Incapacitated Person needs “protection from substantial harm”.

### III. PROPOSED STATUTORY LANGUAGE

**No guardian or limited guardian may prevent or limit contact between an Incapacitated Person and another person except when necessary to protect the Incapacitated Person from substantial harm. The Standards of Practice for Certified Professional Guardians shall include written protocols to be used in making such determinations, and written notice of such proposed actions by the guardian and the right to appeal shall be provided by the guardian or limited guardian to all persons affected.**

**Any such action by the guardian may be appealed to the court. Any court order preventing or limiting contact between an Incapacitated Person and another person shall be based on written findings of fact and conclusions of law entered by the court that the Incapacitated Person requires protection from substantial harm, and the scope of such order shall be no more restrictive than is necessary to prevent substantial harm.**

**If a guardian or limited guardian has reasonable objective grounds to believe that contact between an Incapacitated Person and specified persons is necessary to protect the Incapacitated Person from an immediate threat of substantial harm, or is necessary to protect the Incapacitated Person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 71.34.020, then the guardian or limited guardian may prevent or limit contact from specified persons for the period of time necessary to provide notice to those affected, and to prepare and file a motion or petition for a court order, but in no case for more than thirty days.**

## **PROBLEMS WITH THE LANGUAGE OF SB 5694 (2013 LEGISLATIVE SESSION)**

### **FREEDOM OF ASSOCIATION AND THE RIGHT TO PRIVACY**

When Incapacitated Persons are prevented from visiting with their family, friends and others, such action is an infringement on the freedom of association. When guardians divert and read personal mail sent to the Incapacitated Person, it impacts an Incapacitated Person's right to privacy. Therefore, a statement of legislative intent would be useful to the courts as well as the public. The following language should be included:

"The legislature finds that freedom of association and the right to privacy are constitutional rights that shall not be abridged unless it is necessary to prevent substantial harm to the Incapacitated Person"

**1. The statutory language in the first sentence restricts guardians from limiting contact between an Incapacitated Person and a family member but does not address limiting contact between an Incapacitated Person and friends or others.**

As noted by Tom O'Brien of Guardianship Services of Seattle, the words, "family members" are not defined. In addition, one must wonder, why are only **family members** persons whom the guardian can exclude from contact with the Incapacitated Person without a court hearing? This raises the question, can the guardian limit contact between the Incapacitated Person and non-family members without resorting to court hearings, or are friends, clergy and other professionals in some other protected category which is not subject to isolation by the guardian?

#### ***Suggested Changes:***

In order to make clear that guardians cannot restrict contact between an Incapacitated Person and any person whom the Incapacitated Person wishes to see, the statutory language should be broadened to include friends and other persons who are a part of the Incapacitated Person's life rather than limiting the language only to family members.

**2. The statutory language refers to conduct that constitutes abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 71.34.020**

**ISSUE:** Why does the proposed statutory language permit the guardian to restrict contact with an Incapacitated Person only when there is "abuse, neglect, abandonment or exploitation" by another person? Currently, guardians are using the "best interests" standard when deciding to limit or prohibit contact between an Incapacitated Person and others. The appropriate standard, as adopted by the National Guardianship Association is the "substantial harm" standard. There may be instances in which substantial harm may be done to an Incapacitated Person by a third party, but the harm does not rise to the level of abuse, neglect, abandonment or exploitation.

### **Suggested Changes:**

If a guardian believes that he or she should restrict or deny contact between a family member and an Incapacitated Person because it is necessary to protect the person from substantial harm, which does not rise to the level of abuse, neglect, abandonment or exploitation, then there should be a mechanism to achieve a determination on the merits.

#### **3. What standard should be used to determine if an Incapacitated Person should be restricted from contact with others?**

The issue of isolation from friends and family members has been addressed in the National Guardianship Association (NGA) Standards of Practice, adopted in 2000, Fourth Ed. 2014.

[http://www.guardianship.org/documents/Standards\\_of\\_Practice.pdf](http://www.guardianship.org/documents/Standards_of_Practice.pdf)

It is stated at page 4, under the section titled, *NGA Standard 4 – The Guardian’s Relationship with Family Members and Friends of the Person*

I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship.

A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person.

B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm.

### **Suggested Change:**

The National Guardianship Association Standards should be incorporated into Washington State law for purposes of determining when restrictions on the freedom of association of an Incapacitated Person should be used by guardians.

## **OTHER SUGGESTED CHANGES TO SB 5694**

#### **4. Standard protocols should be developed and used by guardians when the guardian proposes to limit or restrict contact between an Incapacitated Person and other individuals.**

Prior to making a decision that a certain person or persons should have contact with an Incapacitated Person limited or restricted, it is essential that decisions be based on identifiable criteria. In order to achieve this standard of uniformity, guardians should be required to apply written protocols that will be used when the guardian proposes to

limit or restrict contact between an Incapacitated Person and others. The development of protocols will help to assure that objective criteria will be utilized when making decisions to limit or prohibit contact between an Incapacitated Person and others.

### **Suggested Change:**

The Standards of Practice (SOPs) for Certified Professional Guardians must contain written protocols that shall be used to determine whether to limit or exclude any person from having contact with an Incapacitated Person.

- 5. In cases where guardians intend to limit or restrict contact between an Incapacitated Person and others, the guardian should be required to provide advance written notice to the person or persons to be restricted from contact with the Incapacitated Person.**

### **ISSUE:**

Should a guardian be permitted to limit or restrict contact between an Incapacitated Person and others on an arbitrary basis without notice to the Incapacitated Person or to the persons whose contact is to be limited?

### **COMMENT:**

In the absence of exigent circumstances, or circumstances that place the Incapacitated Person in a position involving the risk of immediate substantial harm, it is essential that the guardian give advance written notice to the person or persons whose contact with the Incapacitated Person is to be limited or restricted.

### **Suggested Change:**

Prior to limiting or prohibiting contact between an Incapacitated Person and another person, the guardian must give to the person whose contact with the Incapacitated Person is to be limited or excluded, written notice of the restrictions to be imposed by the guardian. Any decision made by the guardian to limit or prohibit contact between the Incapacitated Person and another person or persons must be based on identifiable and objective criteria.

- 6. Persons who are to have their contact with an Incapacitated Person limited or restricted should be placed on notice by the guardian and given an opportunity to correct their behavior. In order to provide this notice, it is essential that written notice of the offending conduct be provided to the person or persons whose contact the guardian proposes to limit or restrict.**

### **COMMENT:**

Persons who are engaging in conduct that the guardian finds to present a substantial risk of harm to the Incapacitated Person may not be aware that their actions or conduct places them at risk of having their contact with the Incapacitated Person limited or restricted. Therefore, it is essential for the guardian to provide written notice to the person or persons whom the guardian intends to limit or restrict from contact with the Incapacitated Person.

### **Suggested Changes:**

Unless there is a substantial likelihood of immediate substantial harm to the Incapacitated Person, the guardian must provide the person whose contact is to be limited or prohibited advance written notice of any proposed restrictions that the guardian intends to make. The notice should specify any corrective actions that may be taken by the person to be allowed contact with the Incapacitated Person, and give the party to be limited or prohibited from contact with the Incapacitated Person time to correct his or her behavior or actions.

Whenever a guardian decides to restrict the rights of an Incapacitated Person to associate with friends, family and others, this action may be contested by either the Incapacitated Person or those who are restricted from contact with the Incapacitated Person and a court hearing should be held. Before the court issues an order restricting or prohibiting freedom of association with an Incapacitated Person, notice of the hearing must be given to all interested parties at least ten days prior to the entry of such an order, unless the Incapacitated Person is at substantial risk of immediate harm.

Notice of the hearing on the guardian's motion or petition to restrict contact with the Incapacitated Person must be provided at least ten days in advance of the hearing to the Incapacitated Person and all persons who may be the subject of the court's order limiting or restricting contact with the Incapacitated Person. The Incapacitated Person has the right to attend the hearing and be represented by counsel.

If the court issues an order restricting the Incapacitated Person's freedom of association, or orders that limited contact or no contact occur between the Incapacitated Person and other individuals, the court must separately enter findings of fact and conclusions of law and find that contact between the Incapacitated Person and one or more persons will substantially harm the Incapacitated Person. Any person who will be subjected to limited contact or no contact with the Incapacitated Person must be permitted to attend the hearing and to address the court.

If a guardian or limited guardian has reasonable objective grounds to believe that contact between and Incapacitated Person and specified persons is necessary to protect the Incapacitated Person from an immediate threat of substantial harm, or is necessary to protect the Incapacitated Person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 71.34.020, then the guardian or limited guardian may prevent or limit contact from specified persons for the period of time necessary to provide

notice to those affected, and to prepare and file a motion or petition for a court order, but in no case for more than thirty days.