



Certified Professional Guardianship Board
Monday, October 17, 2016 (9:00 a.m. – 1:00 p.m.)
SeaTac Office Center, 18000 International Blvd., Suite 1106
SeaTac, WA

Meeting Minutes

Members Present

Judge James Lawler, Chair
Commissioner Rachelle Anderson
Ms. Rosslyn Bethmann
Dr. Barbara Cochrane
Judge Gayle Harthcock
Mr. William Jaback
Commissioner Diana Kiesel
Dr. K. Penney Sanders
Ms. Amanda Witthauer

Members Absent

Mr. Jerald Fireman
Ms. Carol Sloan
Ms. Barbara West

Staff

Ms. Shirley Bondon
Ms. Kathy Bowman
Ms. Carla Montejo
Ms. Kim Rood
Ms. Eileen Schock

1. Call to Order

Judge Lawler called the meeting to order at 9:00 a.m.

2. Chair's Report

• Welcome, Roll Call & Approval of Minutes

Judge Lawler welcomed the Board members and the public to the meeting, with a special welcome to new Board member, Dr. K. Penney Sanders.

• Approval of Minutes

Judge Lawler inquired if there were any changes or corrections to the proposed minutes from the September 12, 2016 meeting. Hearing none, he requested a motion to approve the minutes of the meeting.

Motion: *A motion was made and seconded to approve the September 12, 2016 meeting minutes. The motion passed. Ms. Rosslyn Bethmann and Commissioner Kiesel abstained.*

3. Public Comment Period

Ms. Claudia Donnelly addressed the Board as a member of the public. A copy of her comments are attached to these minutes.

4. Grievances

Staff noted the month began with 103 open grievances. The increase in the number of grievances is due in part to the implementation of a court complaint

procedure that requires courts to send complaints regarding a certified professional guardian to the Board. Judge Lawler noted that because of this change, it appears as though the concerns about the conduct of professional guardians is increasing; however this is simply a perception and not a fact. A significant number of these complaints are summarily dismissed due to non-jurisdiction by the CPG Board.

Four grievances have been closed during the past reporting period, two for no actionable conduct and two for no jurisdiction. A table reporting guardians with multiple grievances was reviewed. Eighteen grievances associated with a single CPG have been closed as that guardian's certification was not renewed. Another CPG with 10 grievances has agreed to voluntary surrender certification. A board member asked if the non-renewals by these CPGs were voluntary or were they guided in this direction. Staff answered that it was assumed that one CPG did not wish to comply with the sanctions agreed to by the CPG Board. It was also staff's opinion that the other individual was likely too ill to comply. While these grievances will now be closed, they would be reopened if either CPG were to apply for recertification in the future.

5. Updates

WINGS Update

WINGS has now been active for 18 months. Staff presented recommendations submitted by the WINGS Standards and Practice Committee and approved by the WINGS Steering Committee to simplify language and to use respectful language by adopting new terms.

The WINGS Steering Committee approved replacing "Title 11 Guardian ad Litem" with "Court Investigator", "alleged incapacitated person" with "respondent" and "incapacitated person" with "individual in a guardianship."

The WINGS Steering Committee also approved requesting support and collaboration to implement the use of Guardianship Patterns Forms. The Pattern Forms Committee has adopted 54 Guardianship Pattern Forms and additional forms have been requested. Spokane County currently utilizes 95 Guardianship Forms. WINGS has recommended making the Spoken forms available state-wide. The Chair of the Guardianship Pattern Forms Committee agreed to work with WINGS, and either Ms. Bondon or a designee will serve on that committee. Making these model forms available can be helpful in the education and training of guardians.

A board member asked whether AOC will be adopting electronic reporting as is used in Minnesota. Staff responded that while AOC is supportive, it decided not to pursue this at this time, because it has significant resources dedicated to implementing several court case management systems and lacked resources to devote to this effort.

The WINGS Steering Committee also approved submitting proposed guardian standards of practice to the CPG Board. The proposed standards were submitted to address the following:

1. **Question:** Is it appropriate for an attorney to represent the petitioner and the professional guardian?

Proposed Standard:

Any certified professional guardian (CPG) nominated as guardian in a petition to establish a guardianship not filed by the nominated CPG shall only retain legal counsel in that guardianship who does not represent any other party in the guardianship past or present, unless a waiver is obtained by the attorney.

Proposed Standard:

A professional guardian who self-petitions to be guardian for someone must obtain a signed statement from the attorney general stating the reason the attorney general's office will not petition for guardianship; and, engage in an investigation that:

- (1) identifies alternative nominees and provides information as to why alternate nominees who are available are not suitable or able to serve;
- (2) provides a written request from the party requesting the guardianship, which identifies the basis for the request and the basis for the decision by that party not to petition;
- (3) provides documentation from third parties of the facts set out in the petition (such documentation can include statements from care providers, family members, friends, or others with knowledge of the circumstances of the incapacitated person);
- (4) provides documentation that the certified professional guardian has met with the alleged incapacitated person, the results of that meeting, and an opinion by the certified professional guardian of the capacity issues faced by the alleged incapacitated person; and
- (5) discloses to the court any relationship the certified professional guardian may have with a care facility and any practice the care facility may have involving the referral of residents to the certified professional guardian.

Alternative language proposed for the first paragraph in the proposed standard above:

"A professional guardian who self-petitions to be guardian for someone must obtain a signed statement from the attorney general stating the reason the attorney general's office will not petition for guardianship; **except in exigent circumstances**, and, engage in an investigation that:"

2. **Question:** May a guardian who is an attorney provide legal services to an individual in a guardianship?

Proposed Revision to Standard of Practice

406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest. (Adopted 1-9-12)

406.5 (1) A guardian who is also an attorney shall only represent the guardian in their fiduciary capacity as guardian with respect to the administration of the guardianship for the person under guardianship. The guardian shall account to the court for the costs of its services as guardian and as attorney for the guardian separately.

406.5(2) A guardian for a person under guardianship or an attorney who is also the guardian shall not initiate legal action on behalf of the person under guardianship, or respond to legal action initiated against the person under guardianship, without the express approval of the court with local jurisdiction.

406.5(3) A guardian or an attorney who is a guardian shall not serve as attorney for the person under guardianship.

3. **Question:** Is it appropriate for a professional guardian to serve as a guardian in a case where he or she served as a Guardian ad litem ?

Proposed Standard:

A Certified Professional Guardian shall not serve as a guardian and as a guardian ad litem in the same guardianship matter.

Judge Lawler asked the Standards of Practice Committee to review the proposed standards and report to the Board.

Legislation Proposed by Rep. Jinkins

Representative Jinkins has a workgroup focused on developing legislation to address concerns about guardians prohibiting contact between an individual in a guardianship and his or her family or friends. The proposed legislation would prohibit restricting contact without a court order.

Other Updates

The Board's Nominating Committee reviewed the attorney applications received by the Washington State Bar Association to fill the current vacant seat.

6. Proposed Policies, SOPs

Staff explained that most of the language of the draft proposed board bylaws was pulled from General Rule 23, Board Administrative Regulations, Disciplinary Regulation 500 and other board policies. Several unwritten policies were documented in the bylaws: (1) allowing the Department of Social and Health Services and the Washington State Bar Association to nominate representatives to the Board; (2) specific guidance regarding board duties; and (3) the official address of the Board should be AOC.

A board member asked if something should be specifically included about confidentiality. It was generally agreed by the Board that every board member should sign a confidentiality agreement annually. The proposed bylaws will be voted on by the board after the confidentiality section has been added.

7. Reconvene and Vote on Executive Session Discussion

The Board discussed disqualifying applicants based on their credit history. Commissioner Kiesel asked if it was known how many CPGs who have been sanctioned had questionable credit scores. Judge Lawler suggested that this should be the topic of a future agenda item.

Applications Committee

On behalf of the Applications Committee, Mr. Jaback presented the following applications for Board Approval. Members of the Application Committee abstained.

Motion: *A motion was made and seconded to deny Daniel Bayla's application for certification due to demonstrated poor financial responsibility. The motion passed.*

Motion: *A motion was made and seconded to conditionally approve Nancy MacDonald's application for certification. The motion passed.*

Motion: *A motion was made and seconded to conditionally approve Lynn Paulsen's application for certification. The motion passed.*

Motion: *A motion was made and seconded to conditionally approve Kourtney Wytko's application for certification. The motion passed.*

Certification Noncompliance

Staff advised the Board that notices of pending decertification were sent via certified mail to 12 CPGs who had not completed their annual recertification nor

paid the annual certification fee. These individuals were allowed a 10-day response time, which had passed.

Board action was requested on the following:

Motion: *A motion was made and seconded, dependent on correspondence that may have been received over the weekend, to decertify those CPGs previously noted to have not completed their annual recertification. The motion passed.*

Grievances

Motion: *A motion was made and seconded to approve extending a Letter Proposing Corrective Measures under DR 506.4 in CPGB Grievance 2015-012. The motion passed.*

Motion: *A motion was made and seconded to present an Agreement Regarding Discipline proposing a Letter of Reprimand in the matter of CPGB 2015-053 which would proceed to Complaint if the Guardian fails to agree, and to issue a Complaint regarding the same in the matter of CPGB 2012-034, 2013-006, 2015-036. The motion passed.*

8. Wrap Up/Adjourn

Judge Lawler adjourned the meeting at 12:25 p.m. The next meeting is scheduled via Teleconference at 8:00 a.m. on November 14, 2016.

Recap of Motions from October 17, 2016 Meeting

Motion Summary	Status
Motion: <i>A motion was made and seconded to approve the minutes of the September 12, 2016 meeting. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to deny Daniel Bayla’s application for certification. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to conditionally approve Nancy MacDonald’s application for certification. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to conditionally approve Lynn Paulsen’s application for certification. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to conditionally approve Kourtney Wytko’s application for certification. The motion passed.</i>	<i>Passed</i>
Motion: <i>A motion was made and seconded to approve an agreement regarding discipline (ARD) in the matter of CPGB 2015-53 which would proceed to a Complaint if the CPG declines the ARD; and to proceed with a Complaint in CPGB 2012-034, 2013-006, and 2015-036. The motion passed.</i>	<i>Passed</i>

<p>Motion: <i>A motion was made and seconded to approve extending a Letter Proposing Corrective Measures under DR 506.4 in CPGB Grievance 2015-012. The motion passed.</i></p>	<p><i>Passed</i></p>
<p>Motion: <i>A motion was made and seconded, to decertify the 12 CPGs who have not completed annual recertification, dependent on correspondence that may have been received over the weekend. The motion passed.</i></p>	<p><i>Passed</i></p>