Meeting Materials – Regulation 404

November 8, 2021

Historical Board Materials and Minutes re: Regulation 404

(Excerpts relating to Regulation 404)

Regulation 404
Version #1

Guardianship and Conservatorship Program ~~Rules~~ Regulations

404 Contact with the ~~Incapacitated Person~~Individual Subject to Guardianship and/or Conservatorship

404.1 Guardians ~~of the Person~~ or their designees shall have meaningful ~~in-person~~ contact with their clients as needed, generally no less than monthly, unless otherwise authorized by court approval of the guardian's plan or court order. Meaningful contact with the individual under guardianship is to promote the health and well-being of the individual, and, if authorized by the court, the financial affairs of the person, and to stay informed of the individual's status and needs and make decisions that support, encourage, and assist the individual's capabilities and wishes. Meaningful contact may be in-person contact, or via an alternative means of visitation such as: live video conferencing; telephone calls; interviews with third party experts such as medical providers; or interviews with care providers. CPGCs shall continue to document the alternative means of visitation and outreach, along with documentation of the circumstances. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of ~~in-person~~ contact.

404.1.1 The guardian should, when appropriate, assess the ~~incapacitated person's~~ individual's physical appearance and condition (taking into account the ~~incapacitated person's~~ individual's privacy and dignity) and assess the appropriateness of the ~~incapacitated person's~~ individual's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian shall maintain regular communication with the individual, service providers, caregivers, and others attending to the ~~incapacitated person~~ individual.

404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the ~~incapacitated person~~ individual.

404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the ~~incapacitated person~~individual and take appropriate action to ensure that the service plans are being implemented.

~~404.1.5 The guardian shall ensure that the personal care~~ guardian's plan ~~is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person~~ individual ~~at the place of residence and at any program site.~~

404.2 ~~Guardians of the Estate~~ Conservators ~~only~~ or their designees shall maintain meaningful ~~in-person~~ contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements. Meaningful contact with the individual under conservatorship is to stay informed of the individual's status and needs and make decisions that support, encourage, and assist the individual's capabilities and wishes. Meaningful contact may be in-person contact, or via an alternative means of visitation such as: live video conferencing; telephone calls; interviews with third party experts such as medical providers; or interviews with care providers. CPGCs shall continue to document the alternative means of visitation and outreach, along with documentation of the circumstances.

404.3 A certified professional guardian ~~of the person~~, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every three months is made by a certified professional guardian, unless otherwise approved by the court. A certified professional conservator, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every six months is made by a certified professional conservator unless otherwise approved by the court. For other meaningful ~~in-person~~ visits, a certified professional guardian or conservator, as a sole practitioner or agency, may delegate the responsibility for ~~in-person~~ visits with a client to: (a) a non-guardian/conservator employee of the certified professional guardian or conservator, sole practitioner or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian or conservator with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. ~~(Adopted 10-14-2013).~~ Delegation of a power to an agent must be consistent with the guardian and conservator's fiduciary duties and guardian and conservator's plan(s) and other requirements of delegation under RCW 11.130.125 and Regulation 414[1].

RCW 11.130.125

[1]Regulation 414 will address delegation requirements specified in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act at RCW 11.130.125.

404.4. Each certified professional guardian and conservator or certified professional guardian and conservator agency shall ~~conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.~~ exercise reasonable care, skill, and caution in ensuring a background check is conducted on their own employees, other agents, and any

employees of those agents, to the extent the guardian or conservator has delegated a power to such employee or other agent.

RCW 11.130.125 (2) (e)

When determining the scope of a background check, the guardian or conservator should consider the abilities and vulnerabilities of the protected person and the specific task(s) that the employee or agent are being delegated.

A background check must include a criminal history check utilizing public or proprietary databases [2]that are available to the public.

[2] Examples of public or proprietary databases include, but are not limited to, the Washington State Patrol's "Washington Access to Criminal History" (WATCH), Superior Court databases (Odyssey, LINX, ECR Online), Department of Social and Health Services Public Disclosure Office, and the Federal Bureau of Investigations Identity History Summary Check (IdHSC).

Additionally, a background check should include a check of public or proprietary databases that report substantiated findings of abuse, neglect, or exploitation of a vulnerable adult.

When engaging licensed agencies that are required by law or regulation to obtain background checks on their employees, the guardian and conservator may rely on the declaration of the agency that they comply with State background check requirements..

Regulation 404
Version #2

Guardianship and Conservatorship Program ~~Rules~~ Regulations

404 Contact with the ~~Incapacitated Person~~Individual Subject to Guardianship and/or Conservatorship

404.1 Guardians and conservators shall have meaningful contact with the individual under guardianship/conservatorship to promote the health, well-being, and financial affairs of the person and to stay informed of the individual's status and needs and make decisions that support, encourage, and assist the individual's capabilities and wishes. Meaningful contact may include in-person or virtual communication with the individual or others involved with the individual's care or finances. For guardians, meaningful contact once a month is considered a best practice. For conservators, meaningful contact once every quarter is considered a best practice. ~~Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in-person contact.~~

~~404.1.1 The guardian should, when appropriate, assess the incapacitated person's individual's physical appearance and condition (taking into account the incapacitated person's individual's privacy and dignity) and assess the appropriateness of the incapacitated person's individual's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.~~

~~404.1.2 The guardian shall maintain regular communication with the individual, service providers, caregivers, and others attending to the incapacitated person individual.~~

~~404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person individual.~~

~~404.1.4 The guardian shall request that each residential care professional service provider develop an appropriate service plan for the incapacitated personindividual and take appropriate action to ensure that the service plans are being implemented.~~

~~404.1.5 The guardian shall ensure that the personal care guardian's plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person individual at the place of residence and at any program site.~~

~~404.2 Guardians of the Estate Conservators only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements.~~

404.32 ~~A certified professional guardian~~ of the person, as a sole practitioner or agency, ~~must ensure that the initial in-person visit and then one visit every three months is made by a certified professional guardian, unless otherwise approved by the court.~~ A ~~conservator, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every six months is made by a certified professional conservator unless otherwise approved by the court~~ For other meaningful in-person visits, a certified professional guardian ~~or conservator~~, as a sole practitioner or agency, may delegate the responsibility for in-person visits with a client to: (a) a non-guardian/conservator employee of the certified professional guardian ~~or conservator~~, sole practitioner or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian ~~or conservator~~ with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. ~~(Adopted 10-14-2013).~~ Delegation of a power to an agent must be consistent with the guardian and conservator's fiduciary duties and guardian and conservator's plan(s) and other requirements of delegation under RCW 11.130.125 and Regulation 414[1].

RCW 11.130.125

[1]Regulation 414 will address delegation requirements specified in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act at RCW 11.130.125.

404.43. Each certified professional guardian and conservator or certified professional guardian and conservator agency shall ~~conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.~~ exercise reasonable care, skill, and caution in ensuring a background check is conducted on their own employees, other agents, and any employees of those agents, to the extent the guardian or conservator has delegated a power to such employee or other agent.

RCW 11.130.125 (2) (e)

When determining the scope of a background check, the guardian or conservator should consider the abilities and vulnerabilities of the protected person and the specific task(s) that the employee or agent are being delegated.

A background check must include a criminal history check utilizing public or proprietary

databases [2]that are available to the public.

[2] Examples of public or proprietary databases include, but are not limited to, the Washington State Patrol's "Washington Access to Criminal History" (WATCH), Superior Court databases (Odyssey, LINX, ECR Online), Department of Social and Health Services Public Disclosure Office, and the Federal Bureau of Investigations Identity History Summary Check (IdHSC).

Additionally, a background check should include a check of public or proprietary databases that report substantiated findings of abuse, neglect, or exploitation of a vulnerable adult.

When engaging licensed agencies that are required by law or regulation to obtain background checks on their employees, the guardian and conservator may rely on the declaration of the agency that they comply with State background check requirements..

Public Comment
Regulations 400 – 408

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October 20, 2021

Certified Professional Guardian Board
c/o Administrative Office of the Courts
PO Box 41170
Olympia WA 98504

Re: Comments on Proposed Regulations

Dear CPG Board:

I appreciate the opportunity to comment again on the proposed regulations 400-408. I listened to a recent Board meeting and heard the discussion on the regulations. One comment stood out to me—a Board member stated that the Board should not be in the business of "legislating with regulations." I wanted the Board to examine SOP 404 in the light of that comment.

SOP 404 creates a defined (not less than monthly) frequency of visitation requirement that is not in the statute. The UGA requires a guardian to become, or remain, personally acquainted with the individual and maintain sufficient contact through regular visits to know the individual's abilities, limitations, needs, opportunities, and physical and mental health. RCW 11.130.325(2)(a).

Since each guardianship is, by law, to be as unique as the individual, are fixed minimum visitation schedules any longer appropriate? Mandatory visit schedules look like legislating via regulation. Isn't it enough for the guardian/conservator to address the issue of the number of visits in their plans and in their annual reports? Guardians and/or conservators will literally have to provide all of the dates of their visits to the court, so the court can determine, based on the totality of circumstances, whether the number of visits was sufficient.

I would propose amending 404.1 to state:

> Guardians shall have meaningful in-person contact with their clients as needed, ~~generally no less than monthly~~. ~~If contact is not made monthly, the reasons for less frequent contact~~ The frequency of the contact shall be documented and included in the periodic reporting to the court.

I do not understand SOP 404.1.5 as written. What is the "guardian's plan"? Is

the Board referring to the Guardian's Plan that is filed 90 days after appointment? If so, the Guardian's Plan has very little nexus with the kinds of information kept in charts, notes, logs, evaluations, and other documents at the individual's place of residence or program site.

There is no requirement in the UGA for guardians to examine the individual's medical, social work or care records kept at the individual's residence. A guardian is required to "monitor the quality of services" under RCW 11.130.325(2)(d), but that requirement is captured by SOP 404.1.4.

I would recommend the Board delete SOP 404.1.5.

Thank you again for the second opportunity to comment on the proposed regulation changes.

Very truly yours,

DEBORAH JAMESON

Historical Board Materials and Minutes
Re: Regulation 404
(Excerpts relating to Regulation 404)

Meeting Materials

January 10, 2011

CERTIFIED PROFESSIONAL GUARDIAN BOARD

January 10, 2011 9:00 a.m. – 3:00 p.m. Board Meeting
SeaTac Conference Center, 18000 International Blvd., SeaTac, WA

AGENDA

1. **Meeting Called to Order** — Judge Wickham

2. **Board Business** — Judge Wickham
   - **a.** Proposed Minutes
     November 8, 2010
   - **b.** Chair Report
     Welcome to new members
     BJA Update
     GAO Report
     Legislative Update

3. **Office of Public Guardianship** — Shirley Bondon

4. **CPG Practice Experience** — Michele Penberthy

5. **Education Committee** — Gary Beagle, Chair
   - **a.** Updated Attendance Form
   - **b.** UWEO Program Update—CPG Contract

6. **Application Committee** — Robin Balsam, Chair
   Regulation 111.3

7. **Ethics Advisory Committee** — Winsor Schmidt, Chair

8. **Executive Session** — CLOSED TO PUBLIC
   - **a.** Consideration of applications\
   - **b.** Dues decertification

9. **Open Session**
   Reconvene for Board action on Executive Session

10. **Regulations Committee** — Chris Neil, Chair
    - **a.** E & O Regulation 117
    - **b.** Regulation 108 re CPG Names
    - **c.** Standards of Practice

11. **Progress towards 2011 Goals**

Next Meeting Date: February 14, 2011, Telephone Conference 8:00 am

If you are in need of an accommodation, please contact Deborah Jameson at the Administrative Office of the Courts at (360) 705-5227. This meeting site is barrier free.

404 Contact with the Incapacitated Person

404.1 ~~401.15~~ Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in person contact. ~~and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.~~

404.1.1 The guardian shall assess the incapacitated person's physical appearance and condition and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian must maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

404.1.3 The guardian must participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

404.1.4 The guardian shall request that each extended-care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

Comments:

- Proposed 404.1.1: We have never asked our clients to undress to assess their physical condition and will not even if you adopt this standard and all the CPGs on the Board say they do it. We will rely on the nursing staff in the residential facilities and physicians for those in their own homes. We do not know of any regulation that allows us to do this and yet you want to mandate that we do it. We believe it is a violation of our clients' rights to dignity. This is not a Guardian responsibility!!! This should be deleted entirely. When we visit monthly we visit with our clients after we have visited with staff. Our visits are normally friendly and include a visit with our puppy Bruno and sometimes our granddaughters.

- Proposed 404.1.4: Why do we need to ask for a separate service plan for each provider when that is monitored by DSHS for Medicaid clients? Guardians are not the ones that should be policing medical providers. This one is over kill and should be deleted or exempted in Medicaid cases. In SNF's an MDS is done quarterly

and in AFH or AL there is a Negotiated Care Plan and annual HCS assessment. For private pay clients we pay a nurse to do an assessment.

- 404.1.4 A definition of "extended care professional service provider" is needed. This is not a term of art with a generally accepted meaning. I assume it refers to home care agencies, residential facilities, and therapists; but others may make other assumptions. Guardians commonly pay people to provide services over time that are less intensive or formal, and for which development of a written service plan is not needed.

- Proposed 404.1.5: Reviewing charts, notes etc. is not a service DSHS considers a Guardian task per WAC 388-79-050 (4) (b) (ii). We have never done this for our Medicaid clients because it is not necessary for our clients in Nursing Homes, Assisted Living facilities and Adult Family Homes. State law requires regular review of charts by trained state employees. State law also requires all facilities to notify Guardians when there is a problem or incident. If we were to do this it would increase our time by 25% per client and require extensive training of all Guardians to know what they were looking at. We do interact with staff on our monthly visits in residential facilities to get updated and we are called when there is a change in condition and participate in decisions related to care. We follow up on all changes in health care including hospitalizations even when some hospital staff refuse to talk to us. This should be deleted.

- 404.1 – 404.1.2 -I recommend the adoption of the proposed additional language in 404.1, requiring at least monthly contact by guardians. I also recommend the adoption of the language relating to assessment of the incapacitated person's situation (404.1.1). These standards are particularly important to the prevention of abuse. Incapacitated persons in all contexts – facility and community – are vulnerable to abuse, neglect, and exploitation. Frequent in-person contact is the most effective method available to guardians to assure that the individual is safe and healthy.

- 404.1.3 - I recommend adding to 404.1.3 the following language: The guardian shall support the active, in-person participation of the incapacitated person in care and planning decisions, where appropriate.

  The participation of the guardian in planning and decisions is essential. It is also essential that the incapacitated person if at all possible. Many incapacitated persons can gain skills and increase competencies given appropriate support in participating in meetings and other planning opportunities, and the incapacitated person is more likely to be committed to decisions where s/he is involved in the process.

- 404.1.3 This is plainly worded and is a non-discretionary requirement to attend every care planning meeting. There can be no disagreement that participation in care plans is a basic element of the work of a guardian. But it is certainly not the

case that no care planning meeting can ever be missed. This kind of rule alters the role of guardian from advocate and protector to functionary.

- I did not find a standard that addresses sexual contact between the guardian and the incapacitated person. I recommend adoption of the approach taken by the National Guardianship Association (in boldface below) :Standard 3 Guardian's Professional Relationship with the Ward
  I. The guardian shall avoid personal relationships with the ward, the ward's family, or the ward's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
  II. The guardian may not engage in sexual relations with a ward unless the guardian is the ward's spouse or a physical relationship existed before the appointment of the guardian

- We were reviewing the proposed SOPs for guardians at the WAPG seminar yesterday. I am dismayed at the onerous requirements imposed on guardians at the same time DSHS limits funding for guardians I have other issues with the proposed rule changes. But for now, have two: Would the board consider DSHS limitations in its requirements for monthly visits for GOP and quarterly visits of GOE? Would the board consider court orders which allow 6-week visits, in light of these DSHS funding limits?

404.2 ~~401.16~~ Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and ~~that financial arrangements are appropriate~~ appropriateness of financial arrangements.

Comments:

- Proposed 404.2: Guardian of Estate only must visit quarterly. We have two minors where our responsibility is to protect their inheritance from family until they turn 18. We have no responsibility for their "condition" or "financial arrangements". We do not believe visiting is an appropriate expense per proposed standard 410. The frustration is that if this standard is passed, we will have to spend our clients inhertiance to go to court and say no visits are necessary. We advised NGA that we cannot follow their SoP and they have never complained. We don't visit these children at all so you would be citing us regularly for a violation of this SoP. This should be revised or deleted.

- This is the only section which I believe to be in unambiguous error. This provision will impose considerable cost on IPs without any certain benefit. CPGs are invited and enabled by this provision to provide unnecessary service. It will be almost impossible to challenge fees of a CPG acting under color of this requirement.

- I also question the board's quarterly visit requirement for all GOEs. Example: I have a limited GOE in which I primarily provide allowance and pay certain bills for a woman who is high functioning, all via court order. I keep in touch via phone. Going to her home and spending her money for a visit is really

unnecessary in my opinion and is a waste of her money as she is private pay. I also have a GOE of minor and I am holding her money from a settlement of a personal injury matter. I have never met the minor child. I would like to get court orders on both of these cases stating I do not have to visit at all.
Our cases are so fact driven I believe it difficult to regulate and it seems the court is in a better position to make some of these decisions because I can present facts to the court, and describe situations, etc.

404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

Comments:

- Does this include the person nominated a standby guardian?

- Guardian's in at least King and Pierce Counties have been filing Declarations for years in which they attest to performing background checks on all of their employees; in all of this time I have not heard that any complications have occurred when a check revealed a conviction. I'd orient to keeping the language consistent with the statute and simple, and in the manner of simplicity contained in the language of our application regulations.

- I have never hired a felon (that I know of) however I need to have a better understanding of the reason behind this most absolute rule. Most guardianship employees never have any private contact with the Incapacitated Person. And if they do, it is for a very limited time. In all cases the assets in the guardianship should be court protected by blocking and bonding. Therefore theft should be both rare, and recoverable. Plus, the guardian has personally guaranteed the fidelity of the bond with the guardian's personal assets (meaning family home).

- Are we really sure that this rule is in the best interest of the population we serve? I have a case where it was not. The felony limitation in guardianship, recently made it impossible for a mother, to be guardian of the person for her disabled child, when that mother made a bad decision 25 years ago when she was 18.

Recommendations for additional sections

- It is acknowledged that in implementing the substituted judgment standard, a guardian sometimes will allow the IP to be placed under greater risk, or to forgo assistance that would be of benefit to the IP. It is acknowledged that an IP may exercise rights and autonomy in such a way as to frustrate reasonable efforts to protect and assist the IP. It is acknowledged that the law and the orders of the court may create limitations on guardians that reduce the ability of the guardian to protect and assist the IP.

- Abuse I recommend the addition of a standard of practice that formally states the expectation that guardians know the signs of abuse, know how to respond effectively to abuse, and understand the duties of a guardian respecting response to abuse.

Guardian duties regarding identification and response to abuse

a. The guardian shall know and comply with the law regarding the reporting of abuse, neglect, abandonment, and financial exploitation by guardians.

b. The guardian shall know the signs of, and shall promptly respond to, abuse, neglect abandonment and exploitation.

In my view, guardians need more information about abuse and how they can combat it. Guardians must also know what their duty is regarding the reporting of abuse. On two separate occasions I have addressed groups of professional guardians regarding advocacy, and have brought up the subject of response to abuse. In both instances, the group was split on whether or not they were "mandatory reporters" under the law, and most indicated that they did not know. I recommend that the standards contain an explicit statement regarding the status of guardians with respect to mandatory reporting.

The language that I have offered for the standard is incomplete. The standard should contain specific statements regarding guardian responsibilities with respect to the handling of information about abuse. This includes their responsibilities with respect to confidentiality, and consulting with the incapacitated person regarding the reporting of abuse and protecting the incapacitated person. The appropriate direction in the standard should reflect the Board's understanding of whether or not guardians are mandatory reporters. The language I have provided above simply identifies the general areas that I believe should be covered. I recommend greater specificity in the final language.

The following is the statutory definition of mandated reporter (which contains no explicit reference to guardians):

RCW 74.34.020 (11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

- Asserting rights I recommend the addition of the following standard of practice, which requires guardians know basic information about the rights of incapacitated persons, and that the guardian respond where appropriate.

Duty of guardian to assert the civil rights of incapacitated person

a. The guardian shall be reasonably familiar with the protections available to the incapacitated person under laws providing protection the rights of persons with disabilities, including but not limited to the Americans wih Disabilities Act, the Washington Law Against Discrimination, the Rehabilitation Act, the Fair Housing Act, the Individuals with Disabilities Education Act, the Long-Term Resident Rights Act, and shall advocate on behalf of the rights of the incapacitated person and seek assistance from others where appropriate.

b. The guardian shall assist in the identification of reasonable accommodations to ensure that the incapacitated person is able to access public accommodations, employment, and federal, state and local services.

c. The guardian shall assist the incapacitated person in identifying reasonable accommodations that ensure access to court services, including, where appropriate. (Reference GR 33)

d. The guardian shall be know the right of the incapacitated person to appeal the denial of eligibility for services, reduction, suspension, or termination of services, and shall assist the incapacitated person in appealing denials and loss of services where appropriate.

Subsection (c) specifically relates to accommodation for disability in the context of courts. This is specifically identified because the guardian and incapacitated person have a continuing relationship with the courts, and participation in court matters is especially troublesome for many incapacitated persons.

Subsection (d) relates to the standard identified in the proposed additional standard 402.7, and perhaps it is more appropriately placed there. Subsection (d) makes it clear that the guardian shall understand and assert the rights of the incapacitated person to

services, where the person has a right to the services.. Proposed Section 402.7 provides:The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

- Employment I recommend the addition of the following standard:

Guardian's duty to support the incapacitated person in finding a job or other meaningful activity.

a. The guardian shall be familiar with the services that are available to assist incapacitated persons in learning a skill, and finding and maintaining employment.

b. The guardian shall assist the incapacitated person in securing training, employment, and other day activities in accord with the preferences and abilities of the person.

The guardian has a duty to assist the incapacitated person in securing a job or other similar activity, where appropriate. This duty is codified at RCW 11.92.043:

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

In order to discharge this duty, the guardian must understand what services and opportunities are available in order to support the incapacitated person.

Jameson, Deborah

From: Dewey K. Abbott [dkayabbott@wavecable.com]
Sent: Thursday, September 16, 2010 2:23 PM
To: Jameson, Deborah
Subject: Comment on proposed Regualtion 404.3

Deborah,

Does this include the person nominated a standby guardian? Thank you.

Respectfully,

Dewey Abbott
CPG, Guardian ad Litem for Kitsap County

Jameson, Deborah

From: Kenneth Curry [youradvocates@comcast.net]
Sent: Wednesday, December 08, 2010 8:16 AM
To: Jameson, Deborah
Subject: Concerns and opinions regarding proposed Standards of Practice
Attachments: 2010 SoP thoughts.doc

Hello Debra:

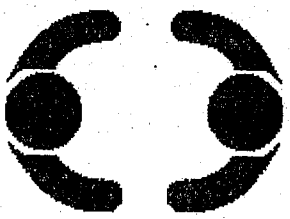
Attached are our concerns and opinions regarding the proposed Standard of Practice.

We plan to be at the January CPG Board meeting and can answer any questions.

Please let us know if you need this in a different format.

Thank you,

Ken and Sylvia Curry
Your Advocates



Your Advocates
Kenneth Curry
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Memo to: CPG Board
Subject: Concerns and opinions regarding proposed Standards of Practice
Dated: December 8, 2010
From: Kenneth and Sylvia Curry of Your Advocates

First, the new outline is appreciated and easier to understand.

Second, using Standards of Practice of the National Guardian Association word for word is not acceptable. The Standards of Practice for the NGA are ideals we strive toward and were created for Guardians in fifty different states with many different additional services provided by the State. When the Certification Board makes those ideals minimum standards subject to discipline you are not using them as intended.

Third, in setting standards you should first of all be guided by the Guardian Legislation RCW 11.88 and 11.92 which states what we are supposed to do. Secondly, you should put your standards within the services that Medicaid will reimburse in WAC 388. You seem to be setting up Guardians for the liability of all providers because you want us to make sure they are doing their job which is already being done by other State workers.

Fourth, thoughts on specific proposed Standard of Practice

Proposed 404.1.1: We have never asked our clients to undress to assess their physical condition and will not even if you adopt this standard and all the CPGs on the Board say they do it. We will rely on the nursing staff in the residential facilities and physicians for those in their own homes. We do not know of any regulation that allows us to do this and yet you want to mandate that we do it. We believe it is a violation of our clients' rights to dignity. This is not a Guardian responsibility!!! **This should be deleted entirely.** When we visit monthly we visit with our clients after we have visited with staff. Our visits are normally friendly and include a visit with our puppy Bruno and sometimes our granddaughters.

Proposed 404.1.4: Why do we need to ask for a separate service plan for each provider when that is monitored by DSHS for Medicaid clients? Guardians are not the ones that should be policing medical providers. **This one is over kill and should be deleted** or exempted in Medicaid cases. In SNF's an MDS is done quarterly and in AFH or AL there is a Negotiated

Care Plan and annual HCS assessment. For private pay clients we pay a nurse to do an assessment.

Proposed 404.1.5: Reviewing charts, notes etc. is not a service DSHS considers a Guardian task per WAC 388-79-050 (4) (b) (ii). We have never done this for our Medicaid clients because it is not necessary for our clients in Nursing Homes, Assisted Living facilities and Adult Family Homes. State law requires regular review of charts by trained state employees. State law also requires all facilities to notify Guardians when there is a problem or incident. If we were to do this it would increase our time by 25% per client and require extensive training of all Guardians to know what they were looking at. We do interact with staff on our monthly visits in residential facilities to get updated and we are called when there is a change in condition and participate in decisions related to care. We follow up on all changes in health care including hospitalizations even when some hospital staff refuse to talk to us. **This should be deleted.**

Proposed 404.2: Guardian of Estate only must visit quarterly. We have two minors where our responsibility is to protect their inheritance from family until they turn 18. We have no responsibility for their "condition" or "financial arrangements". We do not believe visiting is an appropriate expense per proposed standard 410. The frustration is that if this standard is passed, we will have to spend our clients inhertiance to go to court and say no visits are necessary. We advised NGA that we cannot follow their SoP and they have never complained. We don't visit these children at all so you would be citing us regularly for a violation of this SoP. **This should be revised or deleted.**

Proposed 400: Your opening paragraph states that "these standards apply only to the degree that the court has granted a guardian authority in a given standard". You need to be aware that if the WAC doesn't cover a service, the court can't and won't grant authority. You will leave CPGs with Medicaid clients in violation of standards regularly. To ask the Guardian to get the Court's direction on each of these changes that are not covered under WAC is asking this County and State to pay out funds for attorney services, court time and guardian time is not reasonable. We do ask when there are legitimate concerns or questions. DSHS will not allow these fees as they are not in the WAC. **This needs to be revised paying attention to existing RCW's and WAC's.**

Proposed 402.6: This standard is confusing. If we acknowledge our personal limits and those do not include being an attorney, accountant, etc., how are we supposed to assure that the people we select are qualified persons to provide services? We rely on reputation and credentials when we retain other professionals not our knowledge of the profession because we don't have any. **This needs to be revised and clarified.**

Proposed 408.4: Promoting health if Medicaid or Medicare doesn't cover it is very difficult to do. This is a nice ideal but impractical in some Guardianships. Perhaps with the new Medicare plan that includes annual physicals and is designed to be more preventative than reactionary we will be able to do this. Unless the new Congress eliminates it.

Jameson, Deborah

From: Michael/Claudia Donnelly [thedonnellys@oo.net]
Sent: Tuesday, December 21, 2010 11:17 AM
To: Jameson, Deborah
Subject: comments

Dear Ms. Jameson:

I need to read this more completely -- but I do have one comment. This is one reason why some people I know are seeking legislative changes for guardian abuse.

Two ladies I know -- one in the Seattle area and one in the Tacoma area -- are being banned by their mother's guardians from seeing their mother. No reason was given to these ladies. I was a spectator in Court this past April when the guardian's attorney asked for a restraining order to keep this lady from seeing mom. This lady is a Social Worker with a Master's Degree. So, she has an obligation to report abuse where her mother is living -- adult family home. The attorney told the court that "mom got upset when ????? visited". Mom was even in court to testify.

This other lady's mother is in Tacoma -- moved to a new location. The guardian has decided that grandkids, this lady and her siblings and other friends cannot see this lady at all. No visitors are allowed.

I briefly read that guardians have to consider..... Why can't these people see their mothers? Because the guardian doesn't want any trouble makers around. Can't you make a rule that says the IA cannot be isolated from family members or friends -- or pets?

Maybe you need to have a rule that says training shall be required for all individuals who want to be a guardian within Washington State?

There is an attorney in Spokane who used to represent people in court regarding guardians. She is no longer doing it because of all the corruption.

Here is what she wrote to me.

Hi Claudia:

So far as I know, there are numerous problems in all jurisdictions. I have quit practicing in the guardianship area as it has become far too ugly. Several years ago the Center for Social Gerontology received a substantial grant to study the problems with guardianships and, if I remember correctly, to make recommendations about how to improve the process. Washington was one of three states selected for study of specific cases. I met with the attorney who had been hired to perform the study of Washington cases. I think I still have her name and could probably locate her if someone wanted to contact her.

The study was never published; I think because of the numerous problems in guardianship cases. From my many years of practice in guardianship law, these problems include strict limits for attorney fees that are may be imposed on low-income/low-asset individuals. That is, when a guardianship petition is filed asking that a guardian be appointed for a person who has relatively little money and that person cannot afford an attorney, but wants to be represented by an attorney, the court will pay a limited amount of money to the attorney who represents an alleged incapacitated person. After all, all the person has to lose is his or her right to marry; right to vote; right to say where he or she lives; who makes medical decisions; how his or her money is spent; and what kind of medical care is received. That's no big deal, right? For years my husband and I have advocated the use of less restrictive alternatives to guardianship, but this has fallen on deaf ears. Many attorneys who practice in the area of guardianship law are dependent upon a high volume of cases, with almost no advocacy for the alleged incapacitated person. Again, based upon my person experiences, there is frequently a quid pro quo in many counties, where attorneys who represent professional guardians act also serve as guardians ad litem. There is a go-along to get-along mentality. Those attorneys who actively advocate for incapacitated persons are subject to peer pressure to go along. I have been told in the past that I should stop advocating for my clients who were alleged to be incapacitated, because it really didn't matter if the client had a guardian.

Serving as a guardian has become a very lucrative career, and there are no requirements, other than limited training and a high school diploma, to serve as a guardian. Further, guardians do not have to report publicly, what they are being paid.

Many guardians (and guardianship companies) operate on a for-profit basis. The court system is over-worked and understaffed. When it comes to reviewing what a guardian has done with a ward, or the ward's money, the courts can only give these cases a lick and a promise.

Further, when a person has been found to be incapacitated, he or she has lost his or her right to have an attorney represent him or her. Even wards with money cannot access their accounts to hire an attorney, as the guardian has control over the funds. And having a guardian appointed for a person means that the ward has lost the right to contract. Therefore, the ward cannot hire an attorney to represent him or her. When a guardian is not assuring that proper care is being taken of the ward, it may take years for this to come to light.

I am willing to share my own experiences as an attorney in the guardianship arena with the senator. I think I wrote about this quite a while ago, but I represented a lady who was alleged to be incapacitated. She had not seen a physician in many years. After she was admitted to the hospital for an illness, I arranged for her to be treated by a primary care doctor. He diagnosed her with a condition that he thought might be causing her confusion. The attorney who had petitioned to have a professional guardian appointed for the woman opposed my efforts to find out if the woman's confusion was caused by a potentially reversible medical problem, as did the guardian ad litem. They both urged me to agree to the appointment of a professional guardian and "let him take care of it." I spent many, many hours attempting to help this woman and to obtain the care she needed. If her mental confusion had been caused by a reversible medical condition, she might not have needed a guardian. Although her condition began to improve while taking the prescribed medicine in the hospital, as soon as she was home, she declared herself "cured" and stopped taking them. (This is similar to what happens in some cases with schizophrenics .) Everyone involved in the case opposed my efforts to have her treated.

After the guardian was appointed, he promptly moved her to a locked unit in a nursing home, in violation of RCW 11.92.190, where she died within a month or two. No one cared, and the attorney for the guardian closed the guardianship. I have received many complaints from individuals who have had relatives committed to nursing homes by their guardians.

I have had other attorneys attempt to remove me from representing alleged incapacitated persons because I was "an ardent advocate" for my clients. In many cases, zealous advocacy for persons who are alleged to incapacitated is actively discouraged by the courts and by the attorneys who are representing guardians.

I was one of 17 founding members of the National Academy of Elder Law Attorneys (NAELA). My husband and I are authors of seven books in the Washington Practice Series, which are: *Elder Law and Practice*; *Elder Law and Practice Handbook; Probate and Practice* and *Methods of Practice* (four volumes). *Washington* Practice is a set of books which are published for practicing attorneys in Washington State. I have been in practice for more than twenty-five years.

When the state law regarding the appointment of guardians ad litem changed about 12 years ago, I attended the meetings in Olympia and Seattle, which where sponsored by the Department of Social and Health Services. I was asked to serve as the chairperson for the development of the training for guardians ad litem. Two representatives of the Washington State Bar Association also attended the first two meetings. Commissioner Gaddis attended the meetings on behalf of the judiciary. On the second day of the meeting, he announced that the courts were taking over the process involving training of the guardians ad litem, and that if DSHS did not like it, the attorney general could sue the courts. Quite frankly, I was shocked and I resigned as the chairperson.

I made a request for copies of records but Gretchen Leanderson, the Assistant Attorney General for DSHS, who attended the meetings told me that the meeting was not a public meeting, and that the records were not public records. Later on, Ms. Leanderson wrote to me saying that she had reconsidered and that the meeting might have been a public meeting, but she still refused to provide me with the records. The person from DSHS who ran the meetings was Mary Jo Pearson. She acquiesced to all of Commissioner Gaddis' demands.

There is no doubt in my mind that the guardianship process has changed to serve the needs of attorneys, professional guardians and others who are involved in the procedure, at the expense of those who need assistance. Many professional guardians have no training (or sensitivity) regarding the needs of the elderly or those persons with impairments. In many cases, being appointed as a guardian gives the guardian a sense of power and control over individuals who could contribute to the decisions regarding their lives if they had some help. It is generally more expeditious for the guardian to make decisions without the involvement of the incapacitated person. I have seen this happen many times. An individual who is deprived of control of his or her life will frequently become depressed and despondent.

Please let me know what I can do to help. In many cases, those persons who are in need of some limited help which could maintain their independence are having their lives taken over by guardians. I think there are many changes that should be made in Washington's guardianship laws and would be happy to share my ideas. Feel free to forward this message if you like.

Cheryl Mitchell

I sent the document out and asked that people send you their comments -- if they have any. It's too bad that lady A and lady B can't visit their mothers at Christmas. It's also too bad that my mom isn't alive to enjoy the fruits of these proposed changes. David Lord proposed changes to RCW 11.92 --

at a meeting held in October. I'm sure Ms. Bondon has a copy of them -- maybe they can be incorporated into your rule changes also.

Thanks again.

Claudia Donnelly

On Dec 21, 2010, at 10:36 AM, Jameson, Deborah wrote:

Ms. Donnelly,

In the past the Board has permitted late comments. I would encourage you to have any comments to me by the middle of next week because I plan to send out the Board packets at that time.

Deborah Jameson
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-----Original Message-----
From: Michael/Claudia Donnelly [mailto:thedonnellys@oo.net]
Sent: Tuesday, December 21, 2010 10:36 AM
To: Jameson, Deborah
Cc: Bill Anderson
Subject: thanks

Dear Ms. Jameson:

Thanks for the information. I will be sending this out to others for their comments. It said on the document that you would be accepting comments through December 17. I hope that the Board will look at other comments -- since we just found out about it.

Thank you.

Claudia Donnelly

On Dec 21, 2010, at 9:15 AM, Jameson, Deborah wrote:

Ms. Donnelly,

The CPG Board voted on September 13, 2010 to post revised Standards

of Practice for comment. The Board will be discussing the comments received and voting to adopt the Standards starting at the January 10, 2011 Board meeting. I am attaching a copy of the revised Standards. The Regulations Committee considered Ms. Denney's proposals while it made the revisions, as well as National Guardian Association Standards.

Please let me know if you have other questions.

Deborah Jameson
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-----Original Message-----
From: Michael/Claudia Donnelly [mailto:thedonnellys@oo.net]
Sent: Tuesday, December 21, 2010 9:10 AM
To: Jameson, Deborah
Cc: Bill Anderson
Subject: changes for Guardian Board

Dear Ms. Jameson:

I wrote to you last March and again in June about the Guardian Board implementing any changes proposed by Sharon Denney -- from her letter to former Justice Richard Sanders. You never responded to my June note -- June 9, 2010.

In January, I will be going to Olympia to talk to various state legislators about guardian abuse. I will be showing them what Sharon proposed -- and the agenda from the January 2010 Guardian Board meeting that "discussed" them. I would like to tell them what the Guardian Board will be doing to combat guardian abuse. What is the status of those proposed changes?

I also know that the UW doesn't want to talk about guardian abuse in their classes. I know that there is an "advisory committee" to this program. Should we talk to the advisory committee about making changes to the curriculum?

Thank you, in advance, for any information you can provide.

Claudia Donnelly <REG-SOP Proposed Regulations Posting-djj.pdf>

Jameson, Deborah

From: Michael/Claudia Donnelly [thedonnellys@oo.net]
Sent: Wednesday, December 22, 2010 11:24 AM
To: Jameson, Deborah
Cc: Bill Anderson
Subject: additional comments

Dear Ms. Jameson:

A question for you that wasn't answered: Will the curriculum presented by the UW be changed to include discussion about guardian abuse?

Thank you for forwarding the comments I sent you to the Board for review.

I have a second cousin in Montana whose guardian is his grandfather -- my uncle. I have talked with him many times about what happened to mom versus how he is treating his grandson. They live in Hamilton, Montana.

This cousin is paralyzed from the neck down and lives in my uncle's home. His mom -- a registered nurse -- takes him out for trips when she cares for him -- she takes him on overnight stays and visits. My cousin gets better treatment than my mom did when she was institutionalized at Garden Terrace. A care giver comes in and help this cousin; the rest of the time, my cousin -- this person's mom then takes care of him the rest of the time.

This man used to live in a care facility until my uncle saw how filthy it was and how his grandson was not taken care of -- which is why this man lives with his grandparents (his mom lives next door.)

Here are some additional comments I would like to submit. They are in no particular order.

Wards should be allowed to travel out of facilities if they want to. They should be allowed to go outside. They should not be housed in facilities and never see the sun/trees/flowers, etc again because the facility is too busy or "it's too much trouble to go outside". The guardian shall give his/her permission to do so. I took mom out to see Dash Point and to see her home. She was agitated when she returned because she didn't want to be there. The facility blamed me for agitating her -- yet I have some of her records that show she was agitated even when I wasn't there.

What will the Guardian Board do to guardians who break these rules? There needs to be a detailed description of punishment -- or will the Guardian Board decide that guardians can do no wrong -- and therefore, don't need punished?

There should be mandatory training for all guardians.... Included is some type of test/certification that all guardians are aware of state laws regarding guardianships. I like the idea of background checks.

Wards should be able to see all family members/friends, etc.

Notification of hearings that concern the ward should be given to all interested parties -- that includes family members that are estranged from one another. The guardian/their attorney will make sure all interested parties to the guardianship will receive copies of all the documents filed with the courts -- no exceptions.

Mandatory mediation to settle family squabbles before a guardian has to be appointed.. There is an attorney in Spokane who has an alternative to guardianship. Maybe the Courts should take a look at it and implement it state wide.

All agreements between guardians and family members must be provided to the Courts at the time a guardian is appointed. (Example: When I was working with an attorney to get a guardian -- before we went to court -- one of my brothers met with the guardian to be and wrote up an agreement that I was not allowed to give input in, even though I held mom's hcpoa. That agreement said the next time mom was hospitalized, she would go to a facility instead of returning to her home.) That agreement was signed in November 2005; I did not get a copy of it until January 2006 and the court was never told about it. (If you want to see a copy of it, let me know.) Mom passed out in March 2006 and instead of going home, she ended up at Garden Terrace -- where she lived the last 15 months of her life.)

All questions must be answered by the guardian. Wards cannot be drugged by the care facility -- and the guardian should discuss this with the family members.

The guardian must be honest in all their dealings with the ward and family members. Mom's guardian lied to me many times -- and the Guardian Board didn't seem to care.

When the ward dies, the guardian will give all family members the cause of death -- and not just the ones he/she likes.

The guardian will certify in writing that he/she is knowledgeable of all RCWs and WACs and all the Guardian Board rules/regulations. Maybe you need a test or something that they have to pass before they are certified by the state.

The guardian shall show a concern for the ward when it comes to the ward's care at a facility. (Mom's guardian told me "you need to tell your concerns about your mother's care to Garden Terrace staff -- I don't want to know about it".) The guardian shall check out the cleanliness of the care facility -- if the ward is in one -- to make sure the ward doesn't contract a MRSA infection or other viral infections.

Thank you, again, for allowing us to comment on the proposed rules. I hope they are adopted -- and enforced -- by the Board. We are still going to go to the legislature to ask for help.

Claudia Donnelly

COMMENTS
Disability Rights Washington

Proposed Amendments of
Certified Professional Guardianship Standards of Practice
(400 series)

Approved for Comment September 13, 2010

By: David Lord
Public Policy Director
Disability Rights Washington
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Date: December 17, 2010

In providing these comments, I have drawn on my experience as an attorney for Disability Rights Washington, the state-designated protection and advocacy system, which includes numerous contacts with guardians and people with disabilities who are subject to a guardianship and their families and advocates. I have also reflected on my previous experience as a service provider for people with disabilities living in the community, which included numerous contacts with guardians.

In addition, I have reviewed the National Guardianship Association (NGA) Standards of Practice. I recognize that these standards encompass both duties and aspirations for guardianship practice, and that the standards are intended to "strike a consistent balance between standards that represent an ideal and those that recognize practical limitations..." (*NGA Standards, 2007, Preamble)* The NGA standards are considerably more detailed and specific in their requirements that the Washington standards of practice, and the scope of the standards is broader. The NGA standards repeatedly emphasize the guardian's responsibility to ascertain the preferences of the incapacitated person.

As a general comment, I recommend that Washington's standards of practice include additional detail and specificity, and I suggest taking another look at the NGA standards as a source for language. I have not attempted a comprehensive comparison of the NGA and Washington State standards, but have included some examples in my comments below. I have suggested additional language in the proposed standards, and also some additional standards related to the areas covered by the current standards.

In addition, I recommend the development and adoption of three new standards in areas not currently covered. These are:

1. a standard on guardian identification and response to abuse

2. a standard on the guardian's duty to assert the civil rights of the incapacitated person, and

3. a standard on the guardian's duty to assist the incapacitated person in finding a job or other day activity appropriate to the person's preferences and abilities.

Unfortunately, I have not devoted adequate time to address all of the proposed changes. I appreciate the improvements that the proposed changes will bring if adopted. Thank you for this opportunity to provide comments.

A. Recommendations for additional sections

1. Abuse

I recommend the addition of a standard of practice that formally states the expectation that guardians know the signs of abuse, know how to respond effectively to abuse, and understand the duties of a guardian respecting response to abuse.

Guardian duties regarding identification and response to abuse

> **a. The guardian shall know and comply with the law regarding the reporting of abuse, neglect, abandonment, and financial exploitation by guardians.**
>
> **b. The guardian shall know the signs of, and shall promptly respond to, abuse, neglect abandonment and exploitation.**

In my view, guardians need more information about abuse and how they can combat it. Guardians must also know what their duty is regarding the reporting of abuse. On two separate occasions I have addressed groups of professional guardians regarding advocacy, and have brought up the subject of response to abuse. In both instances, the group was split on whether or not they were "mandatory reporters" under the law, and most indicated that they did not know. I recommend that the standards contain an explicit statement regarding the status of guardians with respect to mandatory reporting.

The language that I have offered for the standard is incomplete. The standard should contain specific statements regarding guardian responsibilities with respect to the handling of information about abuse. This includes their

responsibilities with respect to confidentiality, and consulting with the incapacitated person regarding the reporting of abuse and protecting the incapacitated person. The appropriate direction in the standard should reflect the Board's understanding of whether or not guardians are mandatory reporters. The language I have provided above simply identifies the general areas that I believe should be covered. I recommend greater specificity in the final language.

The following is the statutory definition of mandated reporter (which contains no explicit reference to guardians):

RCW 74.34.020 (11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter **18.130** RCW.

2. Asserting rights

I recommend the addition of the following standard of practice, which requires guardians know basic information about the rights of incapacitated persons, and that the guardian respond where appropriate.

Duty of guardian to assert the civil rights of incapacitated person

a. The guardian shall be reasonably familiar with the protections available to the incapacitated person under laws providing protection the rights of persons with disabilities, including but not limited to the Americans wih Disabilities Act, the Washington Law Against Discrimination, the Rehabilitation Act, the Fair Housing Act, the Individuals with Disabilities Education Act, the Long-Term Resident Rights Act, and shall advocate on behalf of the rights of the incapacitated person and seek assistance from others where appropriate.

b. The guardian shall assist in the identification of reasonable accommodations to ensure that the incapacitated person is able to access public accommodations, employment, and federal, state and local services.

c. The guardian shall assist the incapacitated person in identifying reasonable accommodations that ensure access to court services, including, where appropriate. (Reference GR 33)

d. The guardian shall be know the right of the incapacitated person to appeal the denial of eligibility for services, reduction, suspension, or termination of services, and shall assist the incapacitated person in appealing denials and loss of services where appropriate.

Subsection (c) specifically relates to accommodation for disability in the context of courts. This is specifically identified because the guardian and incapacitated person have a continuing relationship with the courts, and participation in court matters is especially troublesome for many incapacitated persons.

Subsection (d) relates to the standard identified in the proposed additional standard 402.7, and perhaps it is more appropriately placed there. Subsection (d) makes it clear that the guardian shall understand and assert the rights of the incapacitated person to services, *where the person has a right to the services.*. Proposed Section 402.7 provides:The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

3. Employment

I recommend the addition of the following standard:

Guardian's duty to support the incapacitated person in finding a job or other meaningful activity.

a. The guardian shall be familiar with the services that are available to assist incapacitated persons in learning a skill, and finding and maintaining employment.

b. The guardian shall assist the incapacitated person in securing training, employment, and other day activities in accord with the preferences and abilities of the person.

The guardian has a duty to assist the incapacitated person in securing a job or other similar activity, where appropriate. This duty is codified at RCW 11.92.043:

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, *and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.*

In order to discharge this duty, the guardian must understand what services and opportunities are available in order to support the incapacitated person.

B. Comments on Proposed Revisions to Standards

401 Guardian's Duty to Court

401.1 The guardian shall perform duties and discharge obligations in accordance with applicable Washington law and the requirements of the court.

This standard of practice requires compliance with state law, but does not reference federal law. Given that the guardian has obligations under federal law (e.g., the federal Americans with Disabilities Act applies to guardians and

requires that they accommodate disability), the language should be broadened to refer to both state and federal law.

The NGA standard references federal law.

NGA Standard 1 Applicable Law
The guardian shall perform duties and discharge obligations in accordance with current state and federal law governing guardianships. The guardian who is certified, registered, or licensed by the Center for Guardianship Certification or by his or her state should be guided by professional codes of ethics and standards of practice for guardians. In all guardianships, the guardian shall comply with the requirements of the court that made the appointment

402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals.

I recommend that a standard be developed addressing the relationship of guardians to professionals who have authority to monitor and provide advocacy to incapacitated persons in facilities and in the community. Two specific examples come to my mind - the Long-Term Care Ombudsman and the state protection and advocacy agency (Disability Rights Washington). The standard might be drafted so as to encompass other organizations as well.

Guardians should also be aware of the provisions of federal and state law governing the relationship between guardians and these agencies.

403 Self-Determination of Incapacitated Person.

I recommend that the Board add additional language to 403.3 and 403.4, below, related to the self-determination of the incapacitated person.

1. 403.3 ~~401.12~~ When appropriate ~~possible~~, the guardian will defer to an incapacitated person's ~~autonomous~~ residual capacity to make decisions.

I recommend that the Board add the following language to 403.3:
The guardian shall recognize that incapacitated persons can express their preferences non-verbally, through gestures, behavioral changes, and other means, and guardians with non-verbal clients shall exercise diligence in attempting to identify these preferences.

2. 403.4 ~~403.9~~ The guardian shall, whenever appropriate ~~possible~~, provide ~~requested~~ information to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to

manage the incapacitated person's estate, and (c) medical and other personal information related to the care of the incapacitated person.

I recommend that the Board add the following language to 403.4:
The guardian shall make reasonable efforts to assist the incapacitated person in actively participating in his or her own planning, decision-making, and advocacy, and shall assist the incapacitated person in developing decision-making and self-advocacy skills.

3. Diversity. The National Guardianship Association Standard 10 provides that the guardian has a duty to identify the "ethnic, religions, and cultural values" of the incapacitated person. I recommend that the Board consider adding this language as a standard.

NGA Standard 10 Guardian's Duties re Diversity and Personal Preference of Ward
I. Ethnic, religious, and cultural values:
A. The guardian shall determine the extent to which the ward identifies with particular ethnic, religious, and cultural values.
B. To determine these values, the guardian shall also consider the following:
1. The ward's attitudes regarding illness, pain, and suffering.
2. The ward's attitudes regarding death and dying.
3. The ward's views regarding quality of life issues.
4. The ward's views regarding societal roles and relationships.
5. The ward's attitudes regarding funeral and burial customs.

4. Sexuality. Standard 10 also addresses the guardian's role regarding sexual relationships. Lack of information about sexuality makes the incapacitated person vulnerable to sexual exploitation, unwanted pregnancy/fatherhood, and sexually-transmitted disease. I recommend that a standard be developed to address this area.

NGA Standard 10 (continued from above)
II. Sexual expression:
A. The guardian shall acknowledge the ward's right to interpersonal relationships and sexual expression. The guardian must take steps to ensure that a ward's sexual expression is consensual, that the ward is not victimized, and that an environment conducive to this expression in privacy is provided.
B. The guardian shall ensure that the ward has information about and access to accommodations necessary to permit sexual expression to the extent the ward desires and to the extent the ward possesses the capacity to consent to the specific activity

5. Respectful Language
I recommend the adoption of a standard addressing the use of respectful language in matters related to the incapacitated person. This issue has been addressed by the Legislature, which mandates the use of "people first" language in all state statutes and regulations, and replaced the term "mental retardation" with "intellectual disability" in all state laws and regulations.

The use of "people first" language in referring to individuals with disabilities is intended to convey that the person is not defined by their disability (e.g., "retarded", "an epileptic", "an autistic"), but is instead a *person* first. (e.g., "a person with an intellectual disability", "a person with epilepsy", "a person with autism"). The term "retarded" is antiquated, and is strongly associated with schoolyard taunts and bullying in the minds of many people with disabilities.

The requirement for "respectful language" in state statutes and regulations is codified at RCW 44.04.280 "State laws – Respectful language":

> (1) The legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The legislature finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.
>
> (2)(a) The code reviser is directed to avoid all references to: Disabled, developmentally disabled, mentally disabled, mentally ill, mentally retarded, handicapped, cripple, and crippled, in any new statute, memorial, or resolution, and to change such references in any existing statute, memorial, or resolution as sections including these references are otherwise amended by law.
>
> (b) The code reviser is directed to replace terms referenced in (a) of this subsection as appropriate with the following revised terminology: "individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness," and "individuals with intellectual disabilities."
>
> (3) No statute, memorial, or resolution is invalid because it does not comply with this section.
>
> (4) The replacement of outmoded terminology with more appropriate references may not be construed as changing the application of any provision of this code to any person.

I recommend the adoption of the following standard:

Guardians shall be familiar with "people first" language and shall use respectful language, as described in , in all professional communications, including communications with the incapacitated person. Guardians shall not use the term "mental retardation" or its variants in referring to the incapacitated person.

Washington law uses the term "incapacitated person" in referring to individuals who are subject to a guardianship. It is, of course, not within the jurisdiction of the Board to replace "incapacitated person" with other terminology. While I believe that it is time to reexamine the use of this term and possibly replace it, I recognize that it is preferable to the formerly used "incompetent person". I have used the term "incapacitated person" throughout these comments.

404 Contact with the Incapacitated Person

1. 404.1 – 404.1.2 -I recommend the adoption of the proposed additional language in 404.1, requiring at least monthly contact by guardians. I also recommend the adoption of the language relating to assessment of the incapacitated person's situation (404.1.1). These standards are particularly important to the prevention of abuse.

Incapacitated persons in all contexts – facility and community – are vulnerable to abuse, neglect, and exploitation. Frequent in-person contact is the most effective method available to guardians to assure that the individual is safe and healthy.

404.1 ~~401.15~~ Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in person contact. ~~and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.~~

404.1.1 The guardian shall assess the incapacitated person's physical appearance and condition and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian must maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

2. 404.1.3 - I recommend adding to 404.1.3 the language indicated in bold face:

404.1.3 The guardian must participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person. **The guardian shall support the active, in-person participation of the incapacitated person in care and planning decisions, where appropriate.**

The participation of the guardian in planning and decisions is essential. It is also essential that the incapacitated person if at all possible. Many incapacitated persons can gain skills and increase competencies given appropriate support in participating in meetings and other planning opportunities, and the incapacitated person is more likely to be committed to decisions where s/he is involved in the process.

3. I did not find a standard that addresses sexual contact between the guardian and the incapacitated person. I recommend adoption of the approach taken by the National Guardianship Association (in boldface below) :

Standard 3 Guardian's Professional Relationship with the Ward

I. The guardian shall avoid personal relationships with the ward, the ward's family, or the ward's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.

II. The guardian may not engage in sexual relations with a ward unless the guardian is the ward's spouse or a physical relationship existed before the appointment of the guardian

405 General Decision Standards

I recommend the inclusion of additional language on "best interests of the ward" included at **NGA Standard 7 Standards of Decision-Making.** I recommend that this language be included in 405.2. The language that appears in boldface in the following was taken directly from NGA Standard 7.

405.1 ~~402.1~~ The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian's determination of the incapacitated person's competent preferences, i.e. what the incapacitated person would have decided when he or she had capacity. ~~This means that~~ The guardian shall make reasonable efforts to ascertain the incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person when the incapacitated person had capacity.

405.2 ~~402.2~~ When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions. **In determining best interests, the guardian shall consider the following:**

A. Best Interest is the standard of decision-making the guardian should use when the ward has never had capacity or when the ward's wishes cannot be determined.

B. The Best Interest standard requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the ward.

C. The Best Interest standard is used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.

D. Best Interest decisions include consideration of the ward's current and previously expressed wishes.

406 ~~Ethics~~ Conflicts of Interest

I recommend adoption of the proposed changes to 406.1-406.4. The standard appropriately addresses "appearance of conflict".

However, I have serious concerns regarding the appropriateness of provision of "direct services" by a guardian to the incapacitated person. The proposed standard requires prior approval by the court, which is preferable to having no requirement at all. Periodic monitoring of this activity by the court is also warranted, as a further safeguard. Unfortunately, given the limited resources of

courts in this regard, I am concerned that courts may not (in reality) be able to effectively appraise the impact of these conflicts, either initially or over time.

406.1 ~~403~~ The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

406.2 ~~406.9~~ There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest.

406.3 ~~403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or a~~ A conflict of interest arises when the guardian has some personal, family or agency interest that might be perceived as self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval. Any potential conflict shall be disclosed to the court immediately in writing.

406.4 ~~403.4, 403.5~~ The guardian or agency shall not directly provide services such as housing, medical, or therapeutic services to the incapacitated person or profit from any transaction made on behalf of the incapacitated person's estate. Some direct services may be approved by the court provided permission of the court is given in advance of the services being provided.

408 Medical Decisions

I recommend adoption of the proposed changes to 408.1:

408.1 ~~405~~ The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive ~~restrictive~~ form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits. See In re Ingram, 102 Wn.2d 827 (1984).

The NGA Standards provide more detail, and I recommend the Board consider adding a standard that includes the steps identified in NGA Standard 6, Section V below. This includes key considerations for the guardian that are not identified in the proposed language (e.g., "D. Determine whether the ward has previously stated preferences in regard to a decision of this nature" – bold-faced below).

NGA Standard 6 Informed Consent

I. Decisions the guardian makes on behalf of the ward shall be based on the principle of Informed Consent

II. Informed Consent is a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.
III. Informed Consent is based on complete information regarding:
A. Adequate information on the issue;
B. Voluntary action; and
C. Lack of coercion.
IV. The guardian stands in the place of the ward and is entitled to the same information and freedom of choice as the ward would have received if he or she were competent.
V. In evaluating each requested decision, the guardian shall do the following:
A. Have a clear understanding of the issue for which informed consent is being sought.
B. Determine the conditions that necessitate treatment or action.
C. Advise the ward of the decision that is required and determine, to the extent possible, the ward's current preferences.
D. Determine whether the ward has previously stated preferences in regard to a decision of this nature.
E. Determine the expected outcome of each alternative.
F Determine the benefit of each alternative.
G. Determine the risks of each alternative.
H. Determine why this decision needs to be made now rather than later.
I. Determine what will happen if a decision is made to take no action.
J. Determine what the least restrictive alternative is for the situation.
K. Obtain a second medical opinion, if necessary.
L. Obtain information or input from family and from other professionals.
M. Obtain written documentation of all reports relevant to each decision

Jameson, Deborah

From: Tom O'Brien [tomob@proguard.org]
Sent: Saturday, September 11, 2010 11:08 AM
To: Jameson, Deborah
Cc: 'Chris Neil'
Subject: Proposed revisions to SOPs

Thank you for sending the committee draft of the SOPs. The changes proposed are, in my opinion, good, and several are very good. In the nature of things my comments below relate to my problems with the proposed language, which are mostly scrivening suggestions. I hope this does not obscure my appreciation of the work of the committee.

401 ~~General~~ Guardian's Duty to Court

~~A guardian shall exercise care and diligence when making decisions on behalf of an incapacitated person. The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest extent consistent with their protection and safety.~~

This is probably the best and most succinct statement of the relationship between the rights of the IP and the authority of a guardian. The wording should be preserved.

401.5 ~~401.3~~ The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. See, for example, RCW 11.92.040 and RCW 11.92.043. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

The reference to specific RCWs should be deleted. It is redundant of the previous sentence, is incomplete, and the statutes are subject to change.

~~401.6~~ 402.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall assure that qualified persons (e.g., attorneys, accountants, stockbrokers, real estate agents, physicians), provide services to the incapacitated person to the extent appropriate.

With regret, I suggest that the "e.g." be deleted and the phrase, "including but not limited to" be substituted. Although the form as proposed is clear and is better English, lists of examples of this kind can be interpreted in unfortunate and mischievous ways.

402.7 The guardian shall develop and maintain a working knowledge of the services, providers, and facilities available in the community. The guardian shall coordinate and monitor services needed by the incapacitated person to ensure that the incapacitated person is receiving the appropriate care and treatment.

I strongly suggest that the two uses of the word "shall" be modified to "shall act to". The rule properly directs the guardian to work with available services and to seek out available care. The vagaries of working with service providers and with clients are such that the best efforts of a qualified guardian cannot guarantee an outcome. Accordingly the "shall"s ought to be modified, just a bit.

404.2 ~~404.16~~ Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and ~~that financial arrangements are appropriate~~ appropriateness of financial arrangements.

This is the only section which I believe to be in unambiguous error. This provision will impose considerable cost on IPs without any certain benefit. CPGs are invited and enabled by this provision to provide unnecessary service. It will be almost impossible to challenge fees of a CPG acting under color of this requirement.

~~403.4 Provision of compensated services other than guardianship services to an incapacitated person by the guardian shall be considered a potential conflict of interest, which must be fully disclosed.~~

The changes to the section 406 are generally very good. I recommend retaining the above section. For just one example, a limited guardian of the estate may be engaged by family to provide care management services, and this should be disclosed.

407.7 ~~404.6~~ Before relocating the incapacitated person to a new residence, the guardian shall consult ~~A relocation should include consultation with professionals actively involved in the care of the incapacitated person,~~ the incapacitated person, ~~objective third parties~~ and, ~~whenever possible, appropriately involved family and friends of the incapacitated person~~ should consult professionals, notice parties, and other third parties involved with the incapacitated person's care.

I very strongly urge that notice parties be dropped from the list of people who should be consulted prior to a relocation. Anyone can become a notice party, and concern for the best interests of the IP is by no means a requirement. Notice parties can not be assumed to have regard for the best interests of the IP, often the contrary is so. Even the weaker admonition of "should" is grist for the mill of people whose sole interests are their own, of vexatious litigators and their ilk. Additionally, it is common for there to be a long list of formal notice parties, and contacting all of them is impractical, costly, and in no ones interest. But many guardians will feel obliged if they have been told they "should" make the unnecessary effort.

408.1 ~~405~~ The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive ~~restrictive~~ form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits. See In re Ingram, 102 Wn.2d 827 (1984).

I am not sure the reference to Ingram is wise. There are three other Washington cases addressing medical consent by guardians which could apply to section 408. The SOPS already admonish the guardian to know the law, and singling out a single case may not be a good idea.

409.12 At the death of the incapacitated person, the guardian shall comply with RCW 11.88.150.

Again, this is redundant of the requirement to know and follow the law, and is redundant of the plain language of the law. Its not clear why this particular section requires special attention.

Finally, I respectfully suggest that words to the following effect be included in the SOPs.

It is acknowledged that in implementing the substituted judgment standard, a guardian sometimes will allow the IP to be placed under greater risk, or to forgo assistance that would be of benefit to the IP. It is acknowledged that an IP may exercise rights and autonomy in such a way as to frustrate reasonable efforts to protect and assist the IP. It is acknowledged that the law and the orders of the court may create limitations on guardians that reduce the ability of the guardian to protect and assist the IP.

GSS

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December 18, 2010

Hon. Chris Wickham
Chair, Certified Professional Guardian Board
Administrative Office of the Courts
PO Box 41170
Olympia WA 98504-1170

RE: Proposed Amendments to Standards of Practice

Dear Judge Wickham,

Please accept the following comments. I would appreciate the opportunity to participate in the discussions of the Board at the next meeting.

The Board should re-consider its approach to Standards of Practice. I have two general concerns about the proposed changes.

First, The current Standards of Practice are minimum standards, and were specifically created as such. This means that any deviation from a particular standard (unless sanctioned by the court) is by definition a violation. By their nature, minimum standards are un-satisfyingly general. In crafting standards that can be applied to the extreme variety that is found in guardianship the standards need to reflect core values that apply to a great majority of the cases. Cases in which it is reasonable to over-ride or dispense with a particular standard should be rare.

I believe that many of the proposed revisions are in the direction of aspirational standards, or best practices. Some of these new provisions should not be applied widely and to all but exceptional cases. This in the long run damages the authority of Standards of Practice as it will foster the routine creation of exceptions.

Many guardianship clients are subject to the vagaries of public funding of basic human needs. Guardians have almost no control over the way our public policies are created or implemented, except to work for a better deal for guardianship clients than those without advocates get. To the degree that the Board elects to implement aspirational standards, the hard reality is that they simply will not be met because the money is not there.

Second, other proposed revisions make specific references to statutes or case law that are not appropriate for Standards of Practice. The Standards require the guardian to be familiar with the law. Selective references to specific law is redundant and weakens this requirement. It suggests that these standards will reflect the universe of laws of concern to guardians, which is a dangerous notion. Laws change, and it should not be necessary to revise these standards as such change occurs. The selective use of legal citations in some sections has instructive value but is

out of place in Standards of Practice. Similar citations to virtually every standard could be identified.

Most professional guardians are not lawyers, and many have scant experience in the fine points of the law. This is intentional and a basic element of the Board's approach to professional guardians. To the extent that a CPG believes that the Standards of Practice contain the legal information they need, they are misled. Guardians need lawyers. Lawyers inform us about the law, the standards are not a substitute and anything that suggests that they are is dangerous.

I would very much agree that a manual setting out best practices and that highlighting specific legal requirements of greatest interest would be a valuable tool for guardians. There is little that I disagree with in the proposal as a matter of good practice. I simply believe it is not well advised to apply the level of specificity of some of the proposals to all cases all of the time with the force of law.

As mentioned below, every act or decision not to act of a guardian can be subject to extensive review and analysis. To the degree that these standards are specific and directive in a manner that can not be uniformly applied in almost all cases, they expose the guardian and the IP to endless legal process. Guardians will have to behave robotically and not in the actual interests of IPs to avoid such problems.

What follows is my analysis of the proposed changes. It is unsatisfying to me and most likely others that the many improvements made to the standards will go unremarked upon except here. Silence is assent. Also, in an effort to be brief and clear I have avoided qualifying statements such as "in my opinion". All of the following comments are made with the greatest respect to the Board and its work.

1. Truly Dangerous

> 407.7 ~~404.6~~ Before relocating the incapacitated person to a new residence, the guardian shall consult ~~A relocation should include consultation with professionals actively involved in the care of the incapacitated person,~~ the incapacitated person, ~~objective third parties~~ and, ~~whenever possible, appropriately involved family and friends of the incapacitated person~~ should consult professionals, notice parties, and other third parties involved with the incapacitated person's care.

I urge the Board in the strongest way to abandon this change altogether. The basic principle that guardians should be consultative in their approach is well established. Guardians who fail in this duty are already subject to sanction. This provision if enacted as a minimum requirement will do nothing to benefit and much to impair the welfare of IPs. This is the perfect example of an aspirational standard that is certain to cause harm if implemented as a minimum requirement.

Guardians commonly encounter situations in which people who have the right to notice do not have the best interests of the IP in mind, when well intentioned but naive family or friends actions cause undue difficulty managing difficult situations. Professional guardians from time to time encounter situations in which immediate action is necessary, or when it is known that caregivers or others exercise undue influence to the detriment of the IP's best interest. The qualifier "should" is insufficient to prevent this harm.

There are occasions that the cognitive status of the IP is such that involved discussions of care plans are outright harmful. A blanket no exceptions allowed requirement that this occur will cause harm in these few cases.

CPGs often are involved in cases in the context of resolving family disharmony, undue influence and other situations that are hazardous to the welfare of the IP. The controversy is generally not ended with the appointment of a guardian. Extended, costly and often pointless legal process often occurs in which every possible "shoulda, coulda" avenue of reproach is brought forward multiple times. This provision is gasoline in such cases.

The situations in which the guardian needs to be allowed discretion usually arise in a way that cannot be addressed with specific direction from the court in advance, and when time and other constraints to not allow petitions for direction

Guardians are responsible for their actions and if they act without appropriate regard to the opinions and sensibilities of the IP, family, friends or professionals the guardian has violated the standards.

2. Of Significant Concern

2.1. 401 ~~General~~ Guardian's Duty to Court ~~A guardian shall exercise care and diligence when making decisions on behalf of an incapacitated person. The civil rights and liberties of the incapacitated person shall be protected. The independence and self-reliance of the incapacitated person shall be maximized to the greatest extent consistent with their protection and safety.~~

The language concerning preservation of rights is not restated as precisely elsewhere in the revisions and so should be retained. This is a core principle of guardians.

2.2. 404.1.3 The guardian must participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

This is plainly worded and is a non-discretionary requirement to attend every care planning meeting. There can be no disagreement that participation in care plans is a basic element of the work of a guardian. But it is certainly not the case that no care planning meeting can ever be missed. This kind of rule alters the role of guardian from advocate and protector to functionary.

2.3. [404.]1.4 The guardian shall request that each **extended-care professional service provider** develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

A definition of "extended care professional service provider" is needed. This is not a term of art with a generally accepted meaning. I assume it refers to home care agencies, residential facilities, and therapists; but others may make other assumptions. Guardians commonly pay people to provide services over time that are less intensive or formal, and for which development of a written service plan is not needed.

2.4. 406.3 ~~403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or a~~ A conflict of interest arises when the guardian has some personal, family or agency interest **that might be perceived** as self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval. Any potential conflict shall be disclosed to the court immediately in writing.

I believe this might be a scivening error. A conflict of interest and the appearance of a conflict of interest are two different things. Both are to be avoided, but they are not equivalent, and the difference is important. Guardians must be vigilant to avoid bad appearances even when there is no actual conflict. Actual conflicts merit greater sanction than bad appearances. I suggest that the section be re-worded to preserve the distinction.

2.5. 406.4 ~~403.4, 403.5~~ The guardian or agency shall not directly provide services such as housing, medical, or therapeutic services to the incapacitated person or **profit** from any transaction made on behalf of the incapacitated person's estate. Some direct services may be approved by the court provided permission of the court is given in advance of the services being provided.

The Board substituted the above for somewhat more specific wording about compensation for non-guardianship services. The new language is not a problem except that it may suffer from misinterpretation. For CPG's who are employees of organizations, often not for profit entities, the

element of undue benefit from a dual role is often not readily discerned, human nature being as it is.

2.6. 409.1.2 The guardian shall, with notice to and permission from the court, allow the incapacitated person to manage funds to his or her ability when appropriate.

The provision is overly strict and is likely to be interpreted to deny the guardian the ability to furnish even modest sums for incidental expenses. It is not in context with the general "competent until shown otherwise" approach of enhancing the IP's autonomy whenever possible. Statutory requirements are sufficient as they stand to govern the guardians behavior. Possibly, the Board should consider a standard that makes explicit the guardian's responsibility for the decisions of this nature made by the guardian.

2.7. 409.7 ~~406.8~~ When it is likely that the incapacitated person's estate will be exhausted, the guardian shall apply for all public benefits for which the incapacitated person is eligible. **In doing so, the guardian shall apply the substituted judgment standard, then the best interest standard to both the application for benefits and any transfers of assets necessary to qualify for those benefits.** ~~the guardian shall, as appropriate, make plans and take necessary steps to acquire public benefits on behalf of the incapacitated person.~~ When implementing necessary changes in the incapacitated person's lifestyle, the guardian shall seek to minimize the stress of any transition.

It is not clear what problem this provision addresses. Occasions virtually never arise in which, by any judgment standard, the guardian should fail to make application for entitlements.

In any case the reference to judgment standards is redundant. These standards apply to all decisions by a guardian. Restating them in this context seems to be intended to convey some message, but to leave the content of the message to interpretation.

3. Inappropriate Citations to Law

3.1. 401.5 ~~401.3~~ The guardian shall provide reports, notices, and financial accountings that are timely, complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory **requirements. See, for example, RCW 11.92.040 and RCW 11.92.043. ...**

The reference to the specific statues does no good. The reports required by the cited statutes demand neither more nor less clarity, completeness or timeliness than other reports the guardian may make, and the citation can only suggest that they are distinctive in some way. The citations to some but not other requirements required is puzzling. For example The reporting duty on the

death of the IP and of attorney's seeking guardian fees are referenced, but not requirements for sale of real property, changes of circumstance or requests for direction.

3.2. **408 Medical Decisions** 408.1 ~~405~~ The guardian shall provide informed consent on behalf of the incapacitated person for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least invasive ~~restrictive~~ form of intervention that is appropriate and available. The components of informed consent include, but are not necessarily limited to, an understanding by the guardian of: (1) the reason for, and nature of, the treatment (2) the benefits of and necessity for the treatment; (3) the possible risks, side effects and other consequences of the treatment and (4) alternative treatments or measures that are available and their respective risks, side effects, and benefits. **See In re Ingram, 102 Wn.2d 827 (1984).**

There are at least three other cases that set standards for medical decision making (Grant, Colyer and Hamlin). Ingram may have some pedagogical advantage, but citing the one case and not others, particularly to an audience of non-attorneys, is hazardous; and citing any case at all is not appropriate to a standard of practice. The extended description of the elements of informed consent is accurate and not exactly harmful but is also not a standard of practice. The standard is to provide informed consent, and it is explicit in the standards that the guardian is to know what this means. This is important material for a guardian to have, but is not appropriate for Standards of Practice. Similar citations and expostulation could be, but are appropriately not, included in the following amended section, which is the better example of a standard of practice:

> 408.3 ~~405.6~~ The guardian shall be familiar with the law regarding the withholding or withdrawal of life-sustaining treatment.

3.3. 409.12 At the death of the incapacitated person, the guardian shall comply with RCW 11.88.150.

There is no requirement of RCW 11.88 with which guardians do not have to comply.
There is no apparent reason for this particular highlight of a requirement of the guardianship statute that can stand on its own, is clear and is applied to all guardians in all cases in any event.

3.4. 410.2 ~~403.3~~ All compensation for the services and expenses of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses except as approved by the court. Factors to be considered in determining the reasonableness of the guardian's fee include:

a. The necessity of the service;

b. The time required;
c. The degree of skill and experience required to perform the service;
d. The cost of any reasonable alternative.

This amendment is not a standard of practice. It accurately describes the manner in which the court will analyze a fee petition, and is cautionary to guardians seeking fees. It is appropriate for a guardianship manual. But, it is not a standard of guardianship practice.

3.5. 410.5 If the guardian is also an attorney, billings shall be in accordance with RCW 11.92.180.

Again, the statute sets out the requirement and does not need to be restated any more than does the balance of RCW 11.92.

Thank you for your attention.

Respectfully,

Tom O'Brien

Jameson, Deborah

From: Lynne Fulp [lmf@ohanafc.com]
Sent: Monday, September 13, 2010 7:53 AM
To: Tom O'Brien; Jameson, Deborah
Cc: Chris Neil
Subject: RE: Proposed revisions to SOPs

I agree with Tom on several of his comments, but I wish to focus on his first comment about the deletion of the "401 General" language. I personally feel that every guardian should commit to memory the legislative intent paragraph found in RCW 11.88.005, which reads:

"It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."

Thank you,
Lynne Fulp
Ohana Fiduciary Corp
PO Box 33710
Seattle, WA 98133
206 782-1189 x 25

-----Original Message-----
From: Tom O'Brien [mailto:tomob@proguard.org]
Sent: Sat 9/11/2010 11:07 AM
To: Deborah.Jameson@courts.wa.gov
Cc: 'Chris Neil'
Subject: Proposed revisions to SOPs

Thank you for sending the committee draft of the SOPs. The changes proposed are, in my opinion, good, and several are very good. In the nature of things my comments below relate to my problems with the proposed language, which are mostly scrivening suggestions. I hope this does not obscure my appreciation of the work of the committee.

This is probably the best and most succinct statement of the relationship between the rights of the IP and the authority of a guardian. The wording should be preserved.

Jameson, Deborah

From: Dan Smerken [eldercare@smerken.com]
Sent: Monday, December 20, 2010 8:46 AM
To: Jameson, Deborah
Subject: Standard of Practice
Attachments: letter to judge wickham.pdf

Deborah,

I am writing to support the attached letter by Tom O'Brien in both his general and specific comments about the revised standards of practice being considered by the Board.

Thank You
Dan Smerken, CPG

Jameson, Deborah

From: John Jardine [john@ugswa.org]
Sent: Thursday, September 16, 2010 2:44 PM
To: 'Chris Neil'; Jameson, Deborah
Cc: 'Robert Swisher'; 'Kimberley Prochnau'; 'James Lawler'; 'Winsor Schmidt'; 'Joseph Valente'
Subject: RE: CPGB--SOP re Background Checks

I 'm with Chris on this. Debra's original language was succinct and to the point; easily understood. Now we are contemplating making the language far more complicated presumably because we are concerned that a guardian doesn't know to be cautious when a background check turns up a disturbing conviction. Guardian's in at least King and Pierce Counties have been filing Declarations for years in which they attest to performing background checks on all of their employees; in all of this time I have not heard that any complications have occurred when a check revealed a conviction.

I'd orient to keeping the language consistent with the statute and simple, and in the manner of simplicity contained in the language of our application regulations.

John Jardine,

Unlimited Guardianship Services

http://www.ugswa.org
206-285-6916 - office
206-282-9358 - fax

From: Chris Neil [mailto:chris.neil@neillaw.com]
Sent: Thursday, September 16, 2010 1:03 PM
To: Jameson, Deborah
Cc: 'Robert Swisher'; Kimberley Prochnau; James Lawler; Winsor Schmidt; Joseph Valente; John Jardine
Subject: Re: CPGB--SOP re Background Checks

CPGB members.

Sorry for my delay. I was in court all afternoon yesterday, and in meetings this morning.

First, I am not a fellon.

Second, I do not support this change.

The phrase:

"No guardian or agency shall have an employee who has been convicted of a felony or misdemeanor involving moral turpitude or has a final finding of a violation involving the abuse, neglect or financial exploitation of a vulnerable adult or child."

is an important and brand-new concept.

I have never hired a felon (that I know of) however I need to have a better understanding of the reason behind this most *absolute* rule. Most guardianship employees never have any private contact with the Incapacitated Person. And if they do, it is for a very limited time. In all cases the assets in the guardianship should be court protected by blocking and bonding. Therefore theft should be both rare, and recoverable. Plus, the guardian has personally guaranteed the fidelity of the bond with the guardians personal assets (meaning family home).

Are we really sure that this rule is in the best interest of the population we serve? I have a case where it was not. The felony limitation in guardianship, recently made it impossible for a mother, to be guardian of the person for her disabled child, when that mother made a bad decision 25 years ago when she was 18.

In my opinion this needs to be discussed.

Thank you for reading this.

cen

Chris Neil
Neil, Nettleton & Neil, P.S.
chris.neil@neillaw.com
253-475-8600

On Sep 16, 2010, at 8:12 AM, Jameson, Deborah wrote:

Great, thank you all for your quick responses. I will post the revised SOPs with the addition of the regulation regarding CPG names and Judge Prochnau's version of the background check requirement. (After reading the paper about the Adult Family Home lack of regulation, I think that having a background check requirement for all of a guardian's employees is putting the CPG program in the front of the pack.)

Deborah Jameson
Guardian Program Coordinator
Administrative Office of the Courts
P O Box 41170
Olympia, WA 98504-1170
360-705-5227
360-956-5700 FAX
Deborah.Jameson@courts.wa.gov

-----Original Message-----
From: Robert Swisher [mailto:Robert_Swisher@co.benton.wa.us]
Sent: Thursday, September 16, 2010 7:37 AM
To: Jameson, Deborah; Kimberley Prochnau; James Lawler; Winsor Schmidt; Chris Neil; Joseph Valente; John Jardine
Subject: RE: CPGB--SOP re Background Checks

Jameson, Deborah

From: Laura Sealey [lsealey@pacifier.com]
Sent: Thursday, November 11, 2010 9:27 AM
To: Jameson, Deborah
Subject: Re: [CERTIFIEDGUARDIANS] CPGB--Reminder re Continuing Education Credits

Hi Deborah, how are you doing?
We were reviewing the proposed SOPs for guardians at the WAPG seminar yesterday. I am dismayed at the onerous requirements imposed on guardians at the same time DSHS limits funding for guardians I have other issues with the proposed rule changes. But for now, have two: Would the board consider DSHS limitations in its requirements for monthly visits for GOP and quarterly visits of GOE? Would the board consider court orders which allow 6-week visits, in light of these DSHS funding limits? I also question the board's quarterly visit requirment for all GOEs. Example: I have a limited GOE in which I primarly provide allowance and pay certain bills for a woman who is high functioning, all via court order. I keep in touch via phone. Going to her home and spending her money for a visit is really unnecessary in my opinion and is a waste of her money as she is private pay. I also have a GOE of minor and I am holding her money from a settlement of a personal injury matter. I have never met the minor child. I would like to get court orders on both of these cases stating I do not have to visit at all.

Our cases are so fact driven I believe it difficult to regulate and it seems the court is in a better position to make some of these decisions because I can present facts to the court, and describe situations, etc.

Finally, I would like to propse that board members go out into the field with guardians, to see the IPs, discuss the history of the case, what the guardian is doing, challenges that have been faced and will be faced, etc., to give board members more of an understanding of what a guardian actually does. Would there be any board interrest if I could find 5 guardians to take board members out with them, or meet at facilities?

Laura Sealey

----- Original Message -----
From: Jameson, Deborah
To: CERTIFIEDGUARDIANS@LISTSERV.COURTS.WA.GOV
Sent: Wednesday, October 20, 2010 11:26 AM
Subject: [CERTIFIEDGUARDIANS] CPGB--Reminder re Continuing Education Credits

Hello. Just a reminder that all guardians (except those who became certified in 2010) must report continuing education credits by January 31, 2011. You have until December 31, 2010 to earn those credits. You must earn 4 person credits, 4 estate credits, 2 ethics credits and 2 general credits.

The link to the form (Form 2 Affidavit of Attendance 2010) that must be submitted is:
http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=guardianforms

The link to the Continuing Education Regulations is:
http://www.courts.wa.gov/committee/?fa=committee.child&child_id=65&committee_id=117

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Jameson, Deborah

From: Michael Johnson [hardmanjohnson@gmail.com]
Sent: Friday, December 17, 2010 4:08 PM
To: Jameson, Deborah
Subject: COMMENTS RE SOPS
Attachments: 2010_12_17_General Comments re Process.pdf; 2010_12_17_Comments_Practical and Conceptual Problems.pdf; 2010_12_17_Comments re Reality vs Appearances.pdf; McKOSKI LAW REVIEW ARTICLE.pdf

Deborah,

Please find attached comments which are submitted by me, James Hardman, J.D., C.P.G., and Julie Watling C.P.G. I am also copying a law review article regarding "appearances" of wrongdoing.

WAPG is not making a formal comment submission at this time.

Thanks and Happy Holidays.

--
Michael L. Johnson, J.D., C.P.G.
93 S. Jackson St - # 55940
Seattle, WA 98104-2818
Tel: (206) 623-3030
Fax: (888) 279-5527

GENERAL COMMENT: PRACTICAL & CONCEPTUAL PROBLEMS
December 17, 2010

New proposals for guardianship reform grow in amount and in scope. The effect of these regulations on the care of vulnerable adults injects legal and ethical uncertainty into the exercise of a guardian's discretion. In some cases, proposals disempower guardians and therefore disempower incapacitated persons; serve interests other than the best interests of the incapacitated person; or, appear to impose prescriptive rules rather than tools to assist guardians in the exercise of their discretion. An objectively reasonable belief standard is the appropriate standard.

1 Disempowering Guardians is Disempowering to Incapacitated Persons

1.1 Empowering guardians empowers incapacitated persons. The entire statutory scheme of in Title 11 is to help people who cannot help themselves to the extent they cannot help themselves.

1.2 Proposals often disempower guardians, making them less effective or placing vulnerable people at risk.

1.3 *Example*: Automatically expiring guardianship letters may put a vulnerable person at risk when an emergency financial or health need arises.

2 The Paramount Purpose of a Guardian is to Serve the IP's Best Interests

2.1 Current legislation regulation requires guardians to serve many divergent and conflicting interests simultaneously, including:
- best interests of the IP (which is paramount)
- interests of the courts
- interests of the CPG Board
- interests of individual constituencies represented on the CPG Board
- interests of state and federal laws and public policy.

2.2 The growth and expansion of regulation creates conflicts among these interests.

2.3 *Examples.*

2.3.1 *Existing Law vs. CPG Board Standards of Practice.* Specific federal and state laws and regulations applicable to residents of some state-operated facilities require that the State and not the

guardian incur the time and expense to propose alternative residential placement, and to require the State to prove the alternative placement is in the best interests of the IP. CPG Board Standards of Practice, however, appear to put the onus on the guardian in all cases.

2.3.2 *Existing Law vs. CPG Board Standards of Practice.* Reporting requirements are always a hot topic. The guardian prudently decides to file two reports at the same time to provide a reduction in the attorney fees in two Medicaid cases, but in order to do so one of the reports is late. Each IP benefits from this. The court benefits by having both heard at the same time. A state statute says harmless error is not a ground for a judgment. Common law does not recognize a harmless breach of duty. CPG Standards of Practice, however, appears to elevate the duty to comply with a filing requirement with no harm to the IP above the guardian's duty to preserve the estate.

2.3.3 *Existing Law vs. CPG Board Standards of Practice.* The statutory scheme requiring a personal care plan expresses a preference for personalized care plans. Care plans have the advantage of being individualized, and one size does not fit all in guardianships. A care plan is compared to the decisions of the guardian and discrepancies are judged against the care plan and whether it should be modified. However, the CPG Standards of Practice appear to trump or dictate the content of a statutory personal care plan.

2.4 GR 23 does not expand, narrow, or otherwise affect existing law. *GR 23(i)* The Standards of Practice are mandatory only to the extent they re-state existing law.

2.5 A guardian must have power to exercise his or her duties. A limit on the power of the guardian means a limit on the guardian's ability to fulfill the paramount duty to serve the IPs best interests.

2.6 In the event of a conflict between any of the interests described above and the best interests of the IP, the best interests of the IP are paramount.

2.7 Adoption of more rules or policies which limit guardian powers or discretion (a) creates additional expense in the form of guardian and attorney fees and (b) exposes the guardian to litigation or grievances when another interest is claimed to be paramount to the best interests of the IP.

2.8 *Proposal:*

"Objectively reasonable belief" standard. A guardian retains power and discretion to follow his or her objectively reasonable belief, at the time that a particular decision or action is made, that it is in the IP's best interests.

GENERAL COMMENT: REALITY VS. "APPEARANCES"
December 17, 2010

The Proposed Standards of Practice include a proposed standard regarding the "appearance" of self-interest. No guardian can be expected to know and comply with the meaning of the proposal. It is not really a standard at all, it only appears to be a standard. Enacting a specific rule is preferable. In any event, an objectively reasonable belief standard is the appropriate standard.

An article is attached entitled, *"Judicial Discipline and the Appearance of Impropriety: What the Public Sees Is What The Judge Gets"*, by Raymond J. McKoski in Minnesota Law Review, June 2010, Volume 94, No. 6. The outline below frequently paraphrases from that article.

1 Generally

1.1 Proposed SOP 409.1 advises certified professional guardians to avoid "an appearance of self-interest."

1.2 An appearance of self-interest standard has utility as an aspirational guide. The reputation of CPGs and the profession as a whole is enhanced. The question is whether or not a violation of the standard is an independent basis for discipline.

1.3 An "appearance" of wrongdoing or impropriety standard is intended to protect the public confidence in CPGs by applying it in cases where there is no identifiable misdeed.

1.4 However, an appearance of wrongdoing standard is not really a standard, it only appears to be one.

2 Can CPGs Readily Understand and Comply with This Proposal? No.

2.1 To determine violations of Standards of Practice, existing law is the guide. GR 23(i) provides GR 23 (and thus Standards under it) do not expand, narrow, or otherwise affect existing law. Existing law adequately defines self-interest.

2.2 Professional norms are not a suitable guide. Unlike judges and lawyers, CPGs do not collectively establish and determine norms or decide what conduct violates a norm. Norms are imposed by others who lack special knowledge gained by CPGs from the relationship with the incapacitated person. Professional norms are not currently available as a guide.

2.3 An "appearance" of wrongdoing standard is a vague and impractical guide because it depends on the state of a third party's knowledge.

2.3.1 A "reasonable person" standard recognizes perceptions of others who do not know all the facts (an ignorant person standard).

2.3.2 A "reasonable person" who is not ignorant, and who fully informed of all the facts would *know* whether or not self-interest occurred.

2.3.3 Only a misinformed or partially informed person sees an "appearance" of wrongdoing.

2.3.4 There is no objective way for a CPG to identify in advance an "appearance" because the CPG would need to guess which part of the full picture a third-party observer might divine.

2.4 An "appearance of self-interest" standard is not a suitable guide because it is overbroad.

2.4.1 Unlike judges, CPGs pay themselves from the estate of the incapacitated person. This "appears" to be the exercise of self-interest. Therefore, every CPG whose source of payment is from the guardianship estate violates the Proposed Standard.

3 Enacting a specific rule is preferable than enacting a Standard that is vague and overbroad.

4 The controlling norm for decision-making and action in a guardianship case should remain the "best interests" of the incapacitated person.

4.1 An "appearance" standard appears to trump or replace the guardian's exercise of his or her discretion to make decisions and act in the IP's best interests.

4.2 Guardians should resolve problems and make decisions based on reality and a recognizable framework, not mirages. An "appearance" standard is not a standard, it only appears to be one.

4.3 *Proposal:*

"Objectively reasonable belief" standard. A guardian retains power and discretion to follow his or her objectively reasonable belief, at the time that a particular decision or action is made, that it is in the IP's best interests.

GENERAL COMMENT REGARDING PROCESS
December 17, 2010

Certified professional guardians see a pressing need for establishing a fair process for proposing new legislative and regulatory initiatives. Proponents of such initiatives should consult, research, analyze and provide a complete explanation in advance.

1 Current Criteria for Legislative and Regulatory Proposals

1.1 Typically, no pre-proposal consultation with Washington Association of Professional Guardians occurs.

Initiatives are usually provided to WAPG in textual form without participation of WAPG. When receiving proposed textual changes, there is no way of understanding from the language alone the purpose or intent behind the proposal, or why particular proposals are being sought.

1.2 Reliance on incomplete knowledge of the practicalities and nuances of guardianship.

1.3 Reliance on misinformation: inaccurate press reports or reports based on selective reporting or exaggeration.

2 Proposal: A proposed analysis for new guardianship proposals is suggested here.

2.1 What is the problem to be addressed?

• Is the proposal a going to fix or address an actual current problem or is it is a solution in search of a problem?

• Does the proposal replicate the supervisory power of the courts?

2.2 What is existing law?

• Does the proposal replicate or modify traditional common law or statutory standards which already exist?

2.3 Why is existing law inadequate?

2.4 Does the initiative cure the problem with existing law?

2.5 Will the proposal empower or inhibit the effectiveness of guardians to protect the best interests of the IP?

2.6 What costs does the proposal create or impose on incapacitated persons, guardians and others?

3.0 Application of Criteria to a Particular Proposal

Meeting Minutes
January 10, 2011

CERTIFIED PROFESSIONAL GUARDIAN BOARD
Board Meeting via Teleconference
February 14, 2011 ~ 8:00 a.m.

AGENDA

1.	**Meeting Called to Order**	Judge Wickham
2.	**Board Business** **a.** Proposed Minutes, January 11, 2011 **b.** Chair Report	Judge Wickham
3.	**Committee Reports**	
	a. SOPC Committee	Comm. Valente
	b. Application Committee **i. Regulation 112 and 113**	Robin Balsam
	c. Regulations Committee	Chris Neil
4.	**Executive Session**	CLOSED TO PUBLIC
5.	**Open Session** Reconvene for Board action on Executive Session	

Next Meeting Date: March 14, 2011, Teleconference 8:00.

If you are in need of an accommodation, please contact Deborah Jameson at the Administrative Office of the Courts at (360) 705-5227. This meeting site is barrier free.

incapacitated person. The guardian shall acknowledge the residual capacity and preferences of the incapacitated person.

403.3 When appropriate, the guardian will defer to an incapacitated person's residual capacity to make decisions.

403.4 Unless otherwise directed by the court, the guardian shall provide copies of all material filed with the court and notice of all hearings in the guardianship to the incapacitated person.

403.5 The guardian shall, whenever appropriate or required by law, provide other requested information to the incapacitated person unless the guardian is reasonably certain that substantial harm will result from providing such information. This information shall include, but not be limited to, regular reports on: (a) the status of investments and operating accounts, (b) the costs and disbursements necessary to manage the incapacitated person's estate, and (c) medical and other personal information related to the care of the incapacitated person.

403.6 The guardian shall inquire about the extent to which the incapacitated person identifies with particular ethnic, religious, and cultural values and shall incorporate those values in the guardian's decision-making to the extent appropriate.

403.7 The guardian shall evaluate the alternatives that are available and choose the one that best meets the needs of the incapacitated person while placing the least restrictions on the incapacitated person's freedom, rights, and ability to control his or her environment.

The vote on the motion to send Regulation 403 back to the Regulations Committee to review it in light of NGA Standard 10 and see if there is any language from the NGA standard to incorporate into Regulation 403 passed unanimously. The Chair will be involved in this process.

A motion was made and seconded to adopt Regulation 404 as follows:

404 Contact with the Incapacitated Person

404.1 ~~401.15~~ Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in person contact. ~~and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.~~

404.1.1 The guardian shall assess the incapacitated person's physical appearance and condition and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian must maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

404.1.3 The guardian must participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

404.1.4 The guardian shall request that each extended-care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

404.2 ~~401.16~~ Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and ~~that financial arrangements are appropriate~~ appropriateness of financial arrangements.

404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

A motion was made and seconded to have Regulation 404 go to the Regulations Committee in light of the discussion about the use of the words "shall", "may" and "must"—a motion to table consideration of Regulation 404. The motion passed 6 to 5.

The board provided input to the Regulations Committee for its consideration—to consider the comments, to address some of the questions raised regarding the standard of care, that the addition of the NGA terms would be helpful, and to separate out the

minimal standards from the best practices. The board asked the Regulations Committee to report back at the April meeting.

A motion was made and seconded to make the effective date of the revised Standards of Practice the date when the Board is completed with reviewing and adopting all of the revisions. The motion passed.

A motion was made and seconded to adopt Regulation 405 as follows:

405 General Decision Standards

All decisions and activities of the guardian shall be made according to the applicable decision standard.

405.1 The primary standard for decision-making is the Substituted Judgment Standard based upon the guardian's determination of the incapacitated person's competent preferences, i.e. what the incapacitated person would have decided when he or she had capacity. The guardian shall make reasonable efforts to ascertain the incapacitated person's historic preferences and shall give significant weight to such preferences. Competent preferences may be inferred from past statements or actions of the incapacitated person when the incapacitated person had capacity.

405.2 When the competent preferences of an incapacitated person cannot be ascertained, the guardian is responsible for making decisions which are in the best interests of the incapacitated person. A determination of the best interests of the incapacitated person shall include consideration of the stated preferences of the incapacitated person and defer to an incapacitated person's residual capacity to make decisions.

Discussion: The terms substituted judgment and best interest are defined by each state's statutes and case law. A question was raised whether the best interest's standard should apply in cases of substantial harm. A motion was made and seconded to add language to Regulation 405 regarding substantial harm. The motion failed by a vote of 2 for to 8 against.

The motion to adopt Regulation 405 as written above passed unanimously.

A motion was made and seconded to have the Regulations Committee look at the remaining regulations and consider any changes based on comments received and bring them back to the Board for action. The motion passed.

Adjourn
Judge Wickham adjourned the meeting at approximately 3:00 pm.

Respectfully submitted,

Meeting Materials
April 11, 2011

CERTIFIED PROFESSIONAL GUARDIAN BOARD MEETING

April 11, 2011
9:00 a.m. - 3:00 p.m.
SeaTac Conference Center, 18000 International Blvd., SeaTac, WA

AGENDA

1. **Meeting Called to Order** — Judge Wickham

2. **Board Business**
   - **a.** Proposed Minutes, March 14, 2011
   - **b.** Chair Report
     Legislative update
     Long-Term Planning Meeting

3. **CPG Practice Experience** — Dan Smerken

4. **Staff Update** — Deborah Jameson
   ID Badges
   Telephone Meetings

5. **Committee Reports**
   - **a. SOPC Committee** — Comm. Valente
     CPGB No. 2007-025 Update
     E&O Implementation Process
   - **b. Application Committee.** — Robin Balsam
     Regulation 112 and 113
     Regulation 111
   - **c. Education Committee** — Gary Beagle
     Testing
   - **d. Appeals Panel** — Judge Lawler

7. **Executive Session** — CLOSED TO PUBLIC
   Appeals Panel decision, applications,

8. **Open Session**
   Reconvene for Board action on Executive Session

9. **Regulations Committee** — Chris Neil
   Standards of Practice

Next Meeting Date: May 9, 2011, Teleconference at 8:00 am

If you are in need of an accommodation, please contact Deborah Jameson at the Administrative Office of the Courts at (360) 705-5227. This meeting site is barrier free.

404 Contact with the Incapacitated Person-tabled by Board 1/10/11 with direction to review in light of definitions of "shall", "must", "should" , "may", etc.

404.1 401.15 Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in person contact. and shall maintain telephone contact with care providers, medical staff, and others \Vho manage aspects of care as needed and appropriate. Meaningful in person contact shall provide the opportunity to observe the incapacitated person's circumstances and interactions with care givers.

404.1.1 The guardian shall assess the incapacitated person's physical appearance and condition and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

404.1.2 The guardian shall ffH:l&t-maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

404.1.3 The guardian shall ffH:l&t-participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person. (Reg ctee 2 to 1 pro adding "shall")

404.1.4 The guardian shall request that each extended-care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

Comments:

- Proposed 404.l. l: We have never asked our clients to undress to assess their physical condition and will not even if you adopt this standard and all the CPGs on the Board say they do it. We will rely on the nursing staff in the residential facilities and physicians for those in their own homes. We do not know of any regulation that allows us to do this and yet you want to mandate that we do it. We believe it is a violation of our clients' rights to dignity. This is not a Guardian responsibility!!! This should be deleted entirely. When we visit monthly we visit with our clients after we have visited with staff. Our visits are normally friendly and include a visit with our puppy Bruno and sometimes our granddaughters.

- Proposed 404. l .4: Why do we need to ask for a separate service plan for each provider when that is monitored by DSHS for Medicaid clients? Guardians are not the ones that should be policing medical providers. This one is over kill and should be deleted or exempted in Medicaid cases. In SNF's an MDS is done quarterly

and in AFH or AL there is a Negotiated Care Plan and annual HCS assessment. For private pay clients we pay a nurse to do an assessment.

- 404.1 .4 A definition of "extended care professional service provider" is needed. This is not a term of art with a generally accepted meaning. I assume it refers to home care agencies, residential facilities, and therapists; but others may make other assumptions. Guardians commonly pay people to provide services over time that are less intensive or formal, and for which development of a written service plan is not needed.

- Proposed 404.1 .5: Reviewing charts, notes etc. is not a service DSHS considers a Guardian task per WAC 388-79-050 (4) (b) (ii). We have never done this for our Medicaid clients because it is not necessary for our clients in Nursing Homes, Assisted Living facilities and Adult Family Homes. State law requires regular review of charts by trained state employees. State law also requires all facilities to notify Guardians when there is a problem or incident. If we were to do this it would increase our time by 25% per client and require extensive training of all Guardians to know what they were looking at. We do interact with staff on our monthly visits in residential facilities to get updated and we are called when there is a change in condition and participate in decisions related to care. We follow up on all changes in health care including hospitalizations even when some hospital staff refuse to talk to us. This should be deleted.

- 404.1 - 404.1.2 -I recommend the adoption of the proposed additional language in 404.1, requiring at least monthly contact by guardians. I also recommend the adoption of the language relating to assessment of the incapacitated person's situation (404.1.1). These standards are particularly important to the prevention of abuse. Incapacitated persons in all contexts - facility and community- are vulnerable to abuse, neglect, and exploitation. Frequent in-person cor:itact is the most effective method available to guardians to assure that the individual is safe and healthy.

- 404.1.3 - I recommend adding to 404.1.3 the following language: The guardian shall support the active, in-person participation of the incapacitated person in care and planning decisions, where appropriate.

  The participation of the guardian in planning and decisions is essential. It is also essential that the incapacitated person if at all possible. Many incapacitated persons can g'ain skills and increase competencies given appropriate support in participating in meetings and other planning opportunities, and the incapacitated person is more likely to be committed to decisions where s/he is involved in the process.

- 404.1.3 This is plainly worded and is a non-discretionary requirement to attend every care planning meeting. There can be no disagreement that participation in care plans is a basic element of the work of a guardian. But it is certainly not the

case that no care planning meeting can ever be missed. This kind of rule alters the role of guardian from advocate andprotector to functionary.

- I did not find a standard that addresses sexual contact between the guardian and the incapacitated person. I recommend adoption of the approach taken by the National Guardianship Association (in boldface b$1ow) :Standard 3 Guardian's Professional Relationship with the Ward
  I. The guardian shall avoid personal relationships with the ward , the ward's family, or the ward's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
  II. The guardian may not engage in sexual relations with a ward unless the guardian is the ward's spouse or a physical relationship existed before the appointment of the guardian

- We were reviewing the proposed SOPs for guardians at the WAPG seminar yesterday. I am dismayed at the onerous requirements imposed on guardians at the same time DSHS limits funding for guardians I have other issues with the proposed rule changes. But for now, have two: Would the board consider DSHS limitations in its requirements for monthly visits for GOP and quarterly visits of GOE? Would the board consider court orders which allow 6-week visits, in light of these DSHS funding limits?

404.2 401.16 Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and that financial arrangements are appropriate appropriateness of financial arrangements.

Comments:

- Proposed 404.2: Guardian of Estate only must visit quarterly. We have two minors where our responsibility is to protect their inheritance from family until they turn 18. We have no responsibility for their "condition" or "financial arrangements". We do not believe visiting is an appropriate expense per proposed standard 410. The frustration is that if this standard is passed, we will have to spend our clients inhertiance to go to court and say no visits are necessary. We advised NGA that we cannot follow their SoP and they have never complained. We don't visit these children at all so you would be citing us regularly for a violation of this SoP. This should be revised or deleted.

- . This is the only section which I believe to be in unambiguous error. This provision will impose considerable cost on IPs without any certain benefit. CPGs are invited and enabled by this provision to provide unnecessary service. It will be almost impossible to challenge fees of a CPG acting under color of this requirement.

- I also question the b oard's quarterly visit requirement for all GOEs. Example: I have a limited GOE in which I primarily provide allowance and pay certain bills for a woman who is high functioning, all via court order. I keep in touch via phone. Going to her home and spending her money for a visit is really

unnecessary in my opinion and is a waste of her money as she is private pay. also have a GOE of minor and I am holding her money from a settlement of a personal injury matter. I have never met the minor child. I would like to get court orders on both of these cases stating I do not have to visit at all.
Our cases are so fact driven I believe it difficult to regulate and it seems the court is in a better position to make some of these decisions because I can present facts to the court, and describe situations, etc.

404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of a having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

Comments:·

- Does this include the person nominated a standby guardian?

- Guardian's in at least King and Pierce Counties have been filing Declarations for years in which they attest to performing background checks on all of their employees; in all of this time I have not heard that any complications have occurred when a check revealed a conviction. I'd orient to keeping the language consistent with the statute and simple, and in the manner of simplicity contained in the language of our application regulations.

- I have never hired a felon (that I know of) however I need to have a better understanding of the reason behind this most absolute rule. Most guardianship employees never have any private contact with the Incapacitated Person. And if they do, it is for a very limited time. In all cases the assets in the guardianship should be court protected by blocking and bonding. Therefore theft should be both rare, and recoverable. Plus, the guardian has personally guaranteed the fidelity of the bond with the guardian's personal assets (meaning family home).

- Are we really sure that this rule is in the best interest of the population we serve? have a case where it was not. The felony limitation in guardianship, recently made it impossible for a mother, to be guardian of the person for her disabled child, when that mother made a bad decision 25 years ago when she was 18.

Meeting Minutes
April 11, 2011

CERTIFIED PROFESSIONAL GUARDIAN BOARD MEETING

May 9, 2011
8:00 a.m. – 9:00 a.m.
Teleconference

AGENDA

1. **Meeting Called to Order** — Judge Wickham

2. **Board Business**
   - **a.** Proposed Minutes, April 11, 2011
   - **b.** Chair Report
     Legislative update
     Long-Term Planning Meeting

5. **Committee Reports**

   - **a. SOPC Committee** — Comm. Valente
     CPGB No. 2011-011
     CPGB No. 2010-004

   - **b. Regulations Committee** — Chris Neil
     Revisions to Standards of Practice--vote re global renumbering and reorganization

   - **c. Education Committee** — Gary Beagle
     Testing—approval of outline
     Regulations 203.2 and 208.1

7. **Executive Session** — CLOSED TO PUBLIC
   CPGB No. 2011-011, CPGB no. 2010-004, applications,

8. **Open Session**
   Reconvene for Board action on Executive Session

Next Meeting Date: June 17 and June 18, 2011, Red Lion Hotel, Olympia

If you are in need of an accommodation, please contact Deborah Jameson at the Administrative Office of the Courts at (360) 705-5227. This meeting site is barrier free.

403.7.1 The guardian shall acknowledge the incapacitated person's right to interpersonal relationships and sexual expression. The guardian shall take reasonable steps to ensure that a private environment conducive to this expression is provided. The guardian shall take reasonable steps to protect the incapacitated person from victimization.[4]

A motion was made and seconded to adopt SOP 403.7.2 as follows:

403.7.2 The guardian shall ensure that the IP is informed of birth control methods when appropriate. [5]

Discussion: There was some discussion about whether it is a guardian's role to inform an incapacitated person about birth control and some discussion of the age of the IP.

The motion passed.

A motion was made and seconded to adopt SOP 403.7.3 as follows:

403.7.3 The guardian shall protect the rights of the IP with regard to sexual expression and preference. A review of ethnic, religious, and cultural values may be necessary to uphold the IP's values and customs.[6]

The motion passed unanimously.

A motion was made and seconded to adopt SOP 403.8 as follows and move it to section 403.3 and renumber the previous sections:

403.8 The guardian shall evaluate the alternatives that are available and choose the one that best meets the needs of the incapacitated person while placing the least restrictions on the incapacitated person's freedom, rights, and ability to control his or her environment.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 404.1 as follows:

404.1 ~~401.15~~ Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. Living in a staffed residential facility or at home with a paid caregiver is not sufficient justification for reducing the frequency of in person contact. ~~and shall maintain telephone contact with care providers, medical staff, and others who manage aspects of care as needed and appropriate. Meaningful in-person contact shall provide the~~

[4] *This regulation was re-numbered and is now 403.8.1.*
[5] *This regulation was re-numbered and is now 403.8.2.*
[6] *This regulation was re-numbered and is now 403.8.3.*

~~opportunity to observe the incapacitated person's circumstances and interactions with care givers.~~

The motion passed unanimously.

A motion was made and seconded to adopt SOP 404.1.1 as follows:

> 404.1.1 The guardian shall assess the incapacitated person's physical appearance and condition and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

Discussion: The Board discussed the balance between respecting the incapacitated person's privacy and dignity and the need to ensure that the IP is not being neglected or abused. There was a friendly amendment to SOP 401.1.1 as follows:

> 404.1.1 The guardian should, when appropriate, assess the incapacitated person's physical appearance and condition (taking into account the incapacitated person's privacy and dignity) and assess the appropriateness of the incapacitated person's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, health and personal care needs, as well as the need for any additional services.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 404.1.2 as follows:

> 404.1.2 The guardian shall maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

Discussion: There was a friendly amendment to add the language, "to the extent regular communication is feasible." The motion failed. A motion was made and seconded to adopt SOP 404.1.2 as follows:

> 404.1.2 The guardian shall maintain regular communication with service providers, caregivers, and others attending to the incapacitated person.

The motion passed.

A motion was made and seconded to adopt SOP 404.1.3 as follows:

> 404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

Discussion: The Board discussed whether a guardian had to physically attend all care or planning conferences because there was a concern that would be unduly burdensome. There was also discussion about how many care conferences do not require decisions to be made. There was a friendly amendment to the regulation as follows:

> 404.1.3 The guardian should ~~shall~~ participate in significant care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person. Participation does not mean that the guardian must physically be present.

The motion to adopt the regulation above failed.

There was a motion made and seconded to adopt SOP 404.1.3 as follows:

> 404.1.3 The guardian shall participate in care or planning decisions concerning the residential, educational, vocational, or rehabilitation program of the incapacitated person.

The motion passed. The chair voted to break the tie.

A motion was made and seconded to adopt SOP 404.1.4 as follows:

> 404.1.4 The guardian shall request that each extended-care professional service provider develop an appropriate service plan for the incapacitated person and take appropriate action to ensure that the service plans are being implemented.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 404.1.5 as follows:

> 404.1.5 The guardian shall ensure that the personal care plan is being properly followed by examining charts, notes, logs, evaluations, and other documents regarding the incapacitated person at the place of residence and at any program site.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 404.2 as follows:

> 404.2 ~~401.16~~ Guardians of the Estate only shall maintain meaningful in-person contact with their clients generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and ~~that financial arrangements are appropriate~~ appropriateness of financial arrangements.

Discussion: The Board discussed concerns that quarterly visits would in some cases be more frequent than needed, especially in cases involving minor guardianships. There was also discussion about whether a guardian should go into court to seek an order approving other than quarterly visits (in an appropriate case) or wait until the next reporting due date.

The motion passed.

A motion was made and seconded to adopt SOP 404.3 as follows:

> 404.3 Each certified professional guardian or certified professional guardian agency shall conduct a criminal history check on any guardian or agency employees who come into contact with the person or estate of an incapacitated person prior to any contact. No guardian or agency shall knowingly allow an employee who has been convicted of a felony or has been adjudicated by any court or administrative agency of having engaged in abuse, neglect or financial exploitation of a vulnerable adult or child to have contact with the person or estate of an incapacitated person.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 406.1 as follows:

> 406.1 ~~403~~ The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 406.2 as follows:

> 406.2 ~~406.9~~ There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

The motion passed unanimously.

A motion was made and seconded to adopt SOP 406.3 as follows:

> 406.3 ~~403.1 The guardian shall avoid self-dealing, conflict of interest, and the appearance of a conflict of interest. Self-dealing or a~~ A conflict of interest arises when the guardian has some personal, family or agency interest that is self-serving or adverse to the interest of the incapacitated person. If the guardian intends to proceed in the face of a conflict of interest, a guardian shall disclose the conflict of interest to the court and seek prior court approval. Any potential conflict shall be disclosed to the court immediately in writing.

Meeting Materials

October 13, 2013

Proposed SOP 404.3

Current SOP 404.3 will be renumbered and become 404.4

Proposed SOP 404.3 as adopted during the June 10, 2013 meeting.

404.3 A certified professional guardian of the person must personally make the initial in person visit and then must personally visit every three months, unless otherwise approved by the court. For other meaningful in-person visits, a certified professional guardian or certified professional guardian agency may delegate the responsibility for in-person visits with a client to: (a) a non-certified professional guardian employee of the certified professional guardian or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. The documentation shall be: dated and signed by the certified professional guardian and maintained in the guardian's client file.

The Regulations Committee submits the following revision for Board consideration:

404.3 A certified professional guardian of the person, as a sole practitioner or agency, must ensure that the initial in-person visit and then one visit every three months is made by a certified professional guardian, unless otherwise approved by the court. For other meaningful in-person visits, a certified professional guardian, as a sole practitioner or agency, may delegate the responsibility for in-person visits with a client to: (a) a non-guardian employee of the certified professional guardian, sole practitioner or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate.

Summary of Public Comments

Against Delegation

1. Persons designated to visit IPs for CPGs are not have the UW training
2. Courts should approve anyone designated to visit who isn't a CPG.
3. The guardian has a statutory duty to visit (RCW 11.92.043(34) prescribes that a guardian has a duty "to care for and maintain the IP in
4. The court in *Raven vs. DSHS* characterized visits as duties of the guardian.
5. NGA Standard 13 V – " The guardian shall visit the no ward no less than monthly."
6. NGA Standard 23 (I) – "The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers."
7. Allowing guardians to designate others to visit undermine certification.
8. Allowing guardians to designate others to visit will result in some CPGs never visiting.
9. Please clarify "non-certified professional guardian employee".
10. It is alleged that the fiduciary duties of the responsible paid guardian are being routinely and too frequently delegated to unauthorized and unqualified junior employees.
11. Delegation doesn't provide checks and balances.
12. One single guardian should be responsible and accountable.
13. Establishes a different standard for agency vs individual guardians.
14. Undermines education goals.
15. Memo is a fig leaf of protection
16. Please define – non-certified professional guardian; independent contractor; final decision-making authority; having considered;
17. Does specifically approved by the Court apply to a, b or c?
18. A companion SOP is needed which clearly defines delegation and accountability

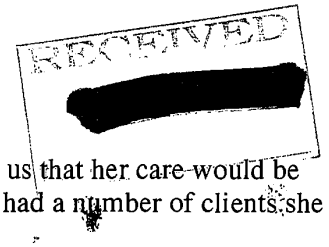
Supporting Delegation

1. CPG should assess the needs of the client and provide an appropriately qualified individual to perform on-site visits is consistent with the requirements of the Board which instructs the guardian to utilize competent individuals and/or entities in addressing client needs.
2. Sanctioning the ability of a guardian to employ qualified individuals or entities to perform client visits will, has the potential to lower travel costs.
3. Remove “delegation” and substitute “ employ or assign”
4. Remove “client” and substitute “incapacitated person”
5. Documenting the suitability of a designated visitor will result in guardians spending unproductive time and client money to create a paper file
6. It is not appropriate to create a rule that allows the Board broad access to records of CPGs. As written the Board could demand records in the absence of a disciplinary proceeding.
7. Revise second paragraph to read “Notwithstanding the decision of a guardian to employ or assign in-person visits with an incapacitated person to another qualified individual, the guardian alone remains responsible for decisions made in the exercise of the guardian’s statutory duty.”
8. Change “one visit every three months” to “four visit per year”.

SOP not needed.

1. Board is problem solving in a vacuum.
2. Board is expanding its authority.
3. Board has no regard for the civil rights of business owners.
4. Board has no regard for the practicalities of business management.
5. Board has no regard for the liberty of business owners.
6. Board has no regard for the increasing need for experienced professional guardians to meet demand.
7. It is not the Board’s job to take measures to prevent guardian mismanagement.
8. It’s only a matter of time before professional guardians start a class action lawsuit against the Board.

May 20, 2013



To Whom It May Concern:

In January 2006, a guardian was appointed for my mom. He told us that her care would be assigned to a case manager – Jessie. Jessie wasn't a guardian but had a number of clients she looked after.

My mother had told my husband and myself many times that she did not want to be in a facility. After being appointed the guardian (John Jardine) and Jessie held 3 meeting to get to know mom at the Fairwood Library. I kept reminding them of RCW 71.05.

Instead of trying to find out about mom, all they concentrated on was trying to get her into a facility. They wanted us to visit this place or that place. When mom was at her house or at Garden Terrace, Jessie only visited once every two weeks.

Things that happened while Jessie was on duty. Mom did not like to eat chicken. I told them this, yet when mom was at Garden Terrace, they gave her chicken to eat. I had to tell the staff about it. She was always becoming hyperglycemic and being send to the hospital. They would give her insulin before a meal and then mom wouldn't eat. One time when I went to see mom, she was in the middle of her room—unable to get up. (She didn't know anything about it.) One day, when I got out there, mom had a big yellow bruise over her eye. Staff told me that "mom walked into a wall". DSHS was notified and conducted an investigation. As it turned out, she fell off the toilet. Mom was supposed to walk to meals, I was there once on a Saturday nights and mom was pushed to the table. When I mentioned this to Jessie, she didn't know it was happening.

In September 2006, there was a care conference that I attended. The nurse said that mom had been given Ativan – which may have caused her to fall. Jessie wrote up a report and said that mom had been given Ativan. When I asked why mom had been drugged, Jessie said: "mom had been given Aricept – not Ativan". Yet, she never explained why she said Ativan.

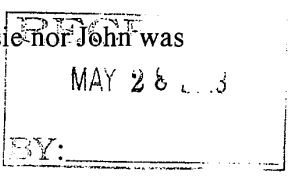
I asked for permission to bring mom to my house for Thanksgiving Dinner. Jessie said I couldn't, but gave me no explanation as to why I couldn't.

The facility started making up stories about me. Jessie was told but never contacted me to get my side of what happened. As it turned out, most of the stories were lies.

Later, in April 2007, mom was hospitalized and when she came back – couldn't drink water. When asked about it, Jessie said that mom hadn't been restricted. Yet, the guardian wrote us a note and said that the doctors had been concerned about mom's swallowing ability – which was why she had been restricted. That was a second lie I caught Jessie in. I told the Guardian board and was told, "guardians don't lie".

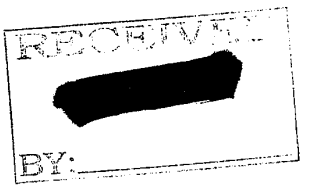
Mom came down with a MRSA infection in June 2007. Jessie never told family members – or if she did, I wasn't included.

There were several times when mom was sent to the hospital and neither Jessie nor John was aware of it happening.



On June 25, 2007, mom didn't eat, drink or take her medicine. As far as I know, family members were not notified. The facility and Jessie planned on having mom taken to the hospital – but she never made it. The transfer was to be made at night – but when the ambulance came, mom was dead.
Neither the guardian nor Jessie told me how mom died.

Was Jessie part of the conspiracy to keep news from me? It sure seems like it.



Claudia Donnelly

[redacted]

Ms. Shirley Bondon
AOC
State Supreme Court
Olympia, WA 98504

Dear Ms. Bondon:

Additional comments on guardian accountability

I would like to make some additional comments about accountability of guardianship duties being delegated to others.

Prior to becoming a guardian in Washington State, potential guardians are required to take a class at the UW. When they delegate visits to their clients to others, the person who is the designated replacement, hasn't had that training. They can't really know what is happening at the house or facility where the client lives.

In my mom's case, neither Jessie nor John knew of my mom's injury to her eye. The facility never told them what happened. The same goes for a foot injury. My mom was supposed to wear her glasses. For a 2-week period, the facility couldn't find her glasses. (I finally found them.) Neither John nor Jessie did anything to help find them. Nor did they coax the facility (as far as I know) to do anything to find the glasses.

Written into her "care plan" was the fact that mom was supposed to walk to meals. Neither John nor Jessie was out at Garden Terrace to see for themselves if the care plan was being adhered to. I purposely went out on a Saturday night to see if the nurse did what was supposed to happen. Mom wasn't allowed to walk to meals; she was pushed in a wheelchair. I asked the nurse about this requirement; she didn't know anything about it. I sent Jessie a note about it, she said she had no idea that that the care plan wasn't being adhered to.

Also in the plan was the fact that mom liked going outside. The last time I went to Garden Terrace to visit mom, there were pillows in front of the patio door – so none of the residents could go outside even though it was sunny outside. Sadly, that's how the facility treated my mother and other residents. The facility only talked to mom when they needed to. Of course, they aren't going to tell the guardian when they don't do things they were supposed to do., but weren't. That's why the guardian needs to visit the client. The case manager doesn't have the same authority as the guardian does.

Another time, on a Sunday, a staff member brought a resident downstairs so they could attend church services. The aide took the resident into the room; locked the brakes for the resident so they couldn't disrupt the services and the resident had to attend and then the aide left. She came back later to take the resident back upstairs. Jessie never visited on Sunday morning either – so she didn't see that the brakes on mom's wheelchair were locked and mom had to stay.

If you do allow the guardian to designate personal visits to the client – I think they should be required to consult with the family, get them to sign this off and then file a well-justified plan with the courts for review. This plan should specifically define the number of visits to be delegated, as well as clearly address how the responsible guardian shall maintain first hand knowledge and full accountability for the client. The guardian should also provide the background of the person who is visiting the client – their experience and education, etc.

Thank you, for allowing the public to comment.

Sincerely,

Claudia Donnelly

Claudia Donnelly

[redacted]

Dear Ms. Bzotte:

I have 12 different people on my email list and someone sent me something that I want to submit for 404.3 ~~with~~ without being named.

Since I don't know if you will be getting this note, I will also send it by snail mail.

When my mother was in the adult home, the guardenship person responsible for her welfare did not keep up with what was going on and we never were made aware of how many times she visited. We received some emails when there was a meeting scheduled or if they had a question. On many visits my wife and I noticed that things were not what they should be and reported it to the guardianship and they so call looked into it and that was the end and we never got any closure to the issues we made them aware of...

If a guardian didn't do a good job, what would a non-guardian do? What is going to happen to the requirement that guardians do criminal background checks on their employees? That is currently SOP 404.3.

Thank you.

Claudia Donnelly

Claudia Donnelly

UNIVERSITY OF
LOUISVILLE.
SCHOOL OF MEDICINE

Winsor C. Schmidt, J.D., LL.M.
Endowed Chair/Distinguished Scholar in Urban Health Policy
Professor of Psychiatry and Behavioral Sciences
Professor of Family and Geriatric Medicine
Professor of Health Management and Systems Sciences

May 30, 2013

Certified Professional Guardian Board
c/o Kimberly Bzotte
Guardian Program
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Re: Proposed Standard of Practice 404.3 Meaningful Visit

Dear Certified Professional Guardian Board (CPGB):

Thank for posting and providing the opportunity for public comment on Proposed Standard of Practice 404.3 Meaningful Visit.[1]

Background of related standards, statutes, and cases

CPGB Standard of Practice (SOP) 404.1 provides that "Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court."[2]

Revised Code of Washington (RCW) section 11.92.043(4) prescribes that a guardian has a duty "to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs."[3]

This statutory duty is part of a guardian's general duty "to provide, to the extent reasonably possible, all the care"[4] needed by an incapacitated person (IP). *Raven v. DHHS* went on to conclude: "We view the specific acts, such as infrequent visits, which the [DHHS] Board [of Appeals] characterized as duties, to be evidence of [a guardian's] failure to meet her general duty."[5]

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[1] Disclosures: I was a member of the Certified Professional Guardian Board for three terms from 2003-2012. Member, District of Columbia Bar.

[2] http://www.courts.wa.gov/committee/?fa=committee.child&child_id=30&committee_id=117#404

[3] http://apps.leg.wa.gov/rcw/default.aspx?cite=11.92.043

For example, regarding the duty in residential decision-making, the Third National Guardianship Summit Guardian Standards specify:

> Standard #6.1
> The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person about where he or she lives, whereas preferences are specific expressions of choice.
> - *First, the guardian shall ask the person what he or she wants.*
> - Second, if the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
> - Third, only when the person, even with assistance, cannot express his or her goals and preferences, the guardian shall seek input from others familiar with the person to determine what the individual would have wanted.
> - Finally, only when the person's goals and preferences cannot be ascertained, the guardian shall make a decision in the person's best interest.

Third National Guardianship Summit Standards and Recommendations, 2012 Utah L. Rev. 1191, 1197 (emphasis added).

[4] Raven v. Department of Social and Health Services (DHHS), 273 P.3d 1017, 1028 (Wash. Ct. App. 2012).

[5] *Id.* The guardian in *Raven v. DHHS* was charged with violation of the Abuse of Vulnerable Persons Act for behavior that included a log of guardian visits "evidenced only six in 2004, two in 2005 (both when Ida [the person under guardianship] was hospitalized [with severe skin ulcers]), and five in 2006." 273 P.3d at 1023.

Pressure ulcers are not uncommon and are associated with high treatment costs and adverse health outcomes. *See, e.g.*, Dan Berlowitz et al., *Are We Improving the Quality of Nursing Home Care: The Case of Pressure Ulcers*, 48 J. Am. Geriatrics Soc'y 59

Guardianship is "a trust relation of the most sacred character."[6] A guardian has a fiduciary duty to her ward.[7]

Standard 13(V) of the National Guardianship Association (NGA) Standards of Practice states that "The guardian shall visit the ward no less than monthly."[8] NGA Standard 23(I) specifies that "The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers."[9]

There are at least eight states that statutorily require visits by the guardian to the incapacitated person. I do not know of any state that statutorily authorizes delegation of the responsibility for in-person visits by the legal guardian.

Guardian certification and lay training undermined?

CPGB duties and powers include formal screening, training, and continuing education of professional guardians.[10] Allowing delegation of in-person visits of incapacitated persons to a "non-certified professional guardian employee," independent contractor, or court-approved individual undermines guardian certification and lay training. The proposed SOP would allow "non-certified professional guardian" employees, independent contractors, or court-approved individuals to do the certified professional guardian work of in-person visits of IPs (a) without screening, training, and continuing education by the Board, (b) without the certification of professional guardians required by GR 23, (c) without the qualification of certification required for appointment of a professional guardian as legal guardian in Washington statute,[11] and (d) without the lay training required for appointment of a lay guardian as legal guardian in Washington statute.[12]

Certified guardians allowed to never have an in-person visit?

The proposed SOP would allow certified guardians to never have an in-person visit with the incapacitated person for whom the guardian is the fiduciary, and for whom, among many other things, the guardian is supposed to determine in good faith what the IP would have consented to if competent (substituted judgment).[13]

Clarity regarding "non-certified professional guardian employee"?

The proposed SOP allows delegation to "a non-certified professional guardian employee," which is a professional guardian employee who is not certified. Washington statute defines "professional guardian" as a guardian who is not a member of the IP's family and who charges fees for carrying out the duties of a guardian of three or more IPs.[14] GR 23(b) states that all professional guardians are subject to the guardian certification rules and regulations. Does the proposed SOP intend allowing delegation to the few (if any) professional guardian employees who are professional guardians charging fees, and who are employees of a

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(2000); Dan Berlowitz et al., *Effect of Pressure Ulcers on the Survival of Long-Term Care Residents* 52A J. Gerontology: Med. Sci. M106 (1997); Madhuri Reddy et al., *Preventing Pressure Ulcers: A Systematic Review*, 296 J. Am. Med. Ass'n 974 (2006).

[6] In re Guardianship of Eisenberg, 43 Wash.App. 761, 766 (1986).

[7] Cummings v. Guardianship Services of Seattle, 110 P.3d 796, 803 (Wash. Ct. App. 2005); In re Guardianship of Eisenberg, *supra* note 6.

[8] National Guardianship Association Standards of Practice (3rd ed. 2007), Standard 13(V), p. 11, http://www.guardianship.org/guardianship_standards.htm

In its preamble, the NGA Standards stipulate that "To ensure consistency in the way the standards are applied, the following constructions are use: "shall" imposes a duty . . ." (p. 1).

[9] National Guardianship Association Standards of Practice (3rd ed. 2007), Standard 23(I), p. 18, http://www.guardianship.org/guardianship_standards.htm

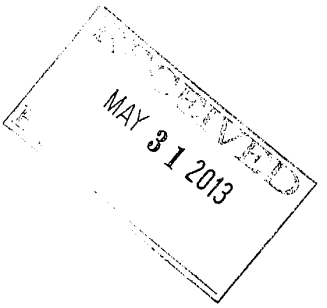
[10] General Rule (GR) 23(c)(2).

[11] RCW 11.88.020(1).

[12] RCW 11.88.020(3).

[13] RCW 7.70.065(1)(c); RCW 11.92.043(5).

[14] RCW 11.88.008.



May 30, 2013

Certified Professional Guardianship Board
Judge James Lawler, Chair
c/o Washington State Administrative Office of the Courts
1112 Quince St SE (Bldg. 1)
PO Box 41170
Olympia WA 98504-1170

Dear Judge Lawler,

The following is in response by the Washington Association of Professional Guardians (WAPG) to the Washington State Guardian Certification Board's (Certification Board) request for public comment in regards to proposed revisions to Standard of Practice (SOP) 404.3.

The first paragraph of the proposed Rule reads as follows: A certified professional guardian or certified professional guardian agency may delegate the responsibility for in-person visits with a client to: (a) a non-certified professional guardian employee of the certified professional guardian or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. WAPG supports the proposed clarification in regards to visits with clients. When read in tandem with SOP 402.2, 402.3, & 402.6, the Certification Board's position that the professional guardian should assess the needs of the client and provide an appropriately qualified individual to perform on-site visits is consistent with those requirements of the Certification Board which instruct the guardian to utilize competent individuals and/or entities in addressing client needs.

In addition, sanctioning the ability of a guardian to employ qualified individuals or entities to perform client visits will, in those circumstances where travel time is a significant commitment will have the effect of lowering costs to the client where the guardian might otherwise be required to commit to extended transportation times

WAPG believes that this first paragraph of the proposed Rule reflects a realistic assessment of the needs of guardian clients. While generally supportive of the proposal, WAPG does recommend that the Certification Board consider some modifications. To wit, WAPG recommends that the concept of "delegation" be removed from the first sentence of the proposed Rule and substituted with the concepts of "employ or assign" on the premise that it is

not the Certified Board's intention to sanction the delegation of decision making required of the guardian by statute. WAPG also recommends that the concept of "client" be removed and substituted with the statutory consistent phrase of "incapacitated person." The revised first paragraph would then begin roughly as follows:

"A CPG or CPG Agency may employ or assign in-person visits with an incapacitated person to (a)....."

The second paragraph of the proposed Rule reads as follows: In all cases, before the delegation, a certified professional guardian with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. The documentation shall be: (a) dated and signed by the certified professional guardian, (b) placed in the guardian's file for that client, and (c) available to the Certified Professional Guardian Board. WAPG also believes that this portion of the proposed Rule should also be modified. While WAPG is sympathetic to the delicate political issues in determining who should perform visits with clients, guardians contract with and employ a variety of specialists to service client needs without being required to document the reasoning behind that employment – guardians do not, for instance, document the basis for employing or contracting for medical and therapeutic professionals, home health agencies, landscapers, movers, companions, adult family homes, care providers, attorneys, construction contractors, plumbers, electricians, accountants, or any other profession or service. And for good reason. To document for all providers in the manner that the proposed paragraph suggests is necessary would result in guardians spending unproductive time and client money to paper a file, an inherently unproductive exercise. And, to suggest the necessity of doing so for one provider to the exclusion of all of the rest is not a logically consistent rule making approach.

In addition, the second paragraph of the proposed Rule contains a provision which stipulates that the CPG's records "shall be available to the Certified Professional Guardian Board". WAPG believes that it is not appropriate to create a Rule that allows the Certification Board such broad access to the records of CPG's since, as written, the Certification Board could demand records even in the absence of disciplinary proceedings. The security and privacy of one's records is a well-accepted principle that needs to continue be respected.

WAPG does recognize that who performs the visit with the client is qualitatively different than who mows the lawn. Arguably, who performs the visit with the client is different than who drafts legal documents, delivers medical care, or provides in-home services and companionship.

WAPG is of the opinion that this second paragraph should be removed on the basis that it is unneeded, or perhaps modified to read something to the effect that "Notwithstanding the decision of a guardian to employ or assign in-person visits with an incapacitated person to another qualified individual, the guardian alone remains responsible for decisions made in the exercise of the guardian's statutory duty."

In conclusion, WAPG supports modification of the proposed Rule which would result in the following language:

"A certified professional guardian or certified professional guardian agency may employ or assign in-person visits with an incapacitated person to: (a) a non-certified professional guardian employee of the certified professional guardian or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the Court. Notwithstanding the decision of a guardian to employ or assign in-person visits with an incapacitated person to another qualified individual, the guardian alone remains responsible for decisions made in the exercise of the guardian's statutory duty."

Respectfully submitted,

Glenda Voller, CPG

Glenda Voller, President
Washington Association of Professional Guardians

[redacted]

Honorable Judge James Lawler;

I am writing you today regarding the proposed Standard of Practice (SoP) 404.3, Meaningful Visits.[1]

As a member of the public, it has been quite difficult to follow this issue, to understand the real questions involved, and also to see the Board having a hard time sorting things out.

While the text looks quite simple, the issues represented are not. After studying the related questions in detail, I find myself agreeing emphatically with one of your Board members, who explicitly stated a view that adopting this regulation, as now formulated, would be a "big mistake" and a most regrettable action. I also found another Board member's concerns about accountability and delegation to be compelling.

My detailed observations can be grouped into the following five categories, which are explained further below.

1. Central policy issues have not been properly addressed.
2. There are practical problems in the proposed text.
3. Should some version of this SoP be passed, other requirements need to be considered.
4. Shortcomings in public deliberations and in voting.
5. Communication with the public and posting for comment have been problematic.

I believe underlying issues are actually relatively straight forward, even though they aggregate into a complex picture. Over the years, the standards and expectations for paid guardianships have been changing, with an increasing focus on serving the deepest personal needs of the incapacitated person. The National Guardianship Association (NGA) has been a venue for discussion, with conclusions published in the form of proposed national "Standards of Practice".[2] On this topic, Section 13 V of the Third Edition of these Standards (Published in 2007) reads:

> ***"The guardian shall visit the ward no less than monthly."***

The NGA text continues on to detail the purpose and guidelines for such visits.

I believe it was last year your CPGB Standards of Practice incorporated the NGA "13 V" standard as Section 404.1, presumably in an effort to "keep up with the times". That is, be in harmony with national thinking and standards. But while this step may have seemed straight forward, the fact is that some persons have

become concerned that the more stringent client-centered standard of service is not being followed by a number of agencies operating in Washington State. It has been alleged that in these agencies, the fiduciary duties of the responsible paid guardian are being routinely and too frequently delegated to unauthorized and unqualified junior employees. If true, some maintain that this would result in poorer service to incapacitated persons in need of decision support, while also putting those guardians and agencies who comply at an economic disadvantage.

Unfortunately, the proposed 404.3 text, as I read it, would fully retract key intentions of section 404.1, thus accepting inappropriate delegation of the emerging standard of the paid guardian's fiduciary duty to maintain **true and first-hand in-person knowledge of the needs, wishes, and best-interests** of each and every incapacitated person for whom she or he has personal responsibility. In addition, as I read it, this text would extend authority (absent checks and balances) to further delegate these fiduciary duties to independent contractors, and to pretty much any other person the responsible guardian identifies and is able to present to a Superior Court as possibly appropriate.

Another Board member noted in your April 8th in-person SeaTac meeting, that this question has been the subject of deliberation for over a year, implying it is time for a decision. After all, the issue of providing services to vulnerable persons with minimal assets and/or income is in the balance. Yet the proposed 404.3 text which would *de facto* "retract" 404.1 if approved, is simply not acceptable in my view. I see an imprudent and un-checked delegation of core fiduciary responsibilities which is unwise.

That is, I believe this potential reduction in care standards would compromise the most fundamental rights of incapacitated persons, and thus underlying purposes of the CPGB. While raising standards of education, competence, and performance, instead of being satisfied with regrets, "tut-tutting" or hand-wringing (or worse, not knowing) when situations go wrong, are what should be at the forefront of community thinking.

Surely this is a topic where solid analysis and discussion is needed. So from a lay-person's point of view it is obvious that input from all interested and knowledgeable parties is essential. Yet it also appears to be a topic for which recusals by those financially most-impacted parties might be appropriate, and an area where any "caucusing" or associated "block voting" (which I believe I've seen evidence of) should be sternly discouraged.

Thank you in advance for having posted this comment, and to those who are able to find time to review my concerns. Each of these five issues is taken up further in the list below.

Tom Goldsmith

1. Central policy issues have not been properly addressed.

a. An emerging new standard requires that one single guardian be **responsible and accountable** for each incapacitated person. And may only delegate key, monthly visits in special circumstances, to another CPG. This thinking has not been well addressed.

b. I strongly believe that policy / quality-level decisions like this should take place with clear support from a higher, perhaps "political" level. i.e., with close support in the Legislature.
This is a matter of quality of services, to be decided within the context of funding.

c. It appeared in the April 8th CPGB discussion of this topic that some interpret CPGB SoP to allow an "agency" to be the guardian of an IP, not a single, designated, individual.
That leaves the question, ***IS*** a single guardian 100% responsible for each incapacitated person, when operating within the context of an agency?
A widely quoted "management" theory (which I have always accepted) is that, "***if multiple persons are made responsible for something, then no one is truly responsible."***

d. A national trend in thinking has emerged over past years (See 13 V at http://www.guardianship.org/documents/Standards_of_Practic.pdf), yet the existence and intentions of this NGA standard do not seem to be seriously considered in 404.3 discussion. Neither is the standard refuted, nor is it in any way discredited.

e. Without such protections, it appears likely that this proposed convention, earlier justified as a way to facilitate and support guardianships in rural areas (where travel times and costs can put guardianship services out of reach for some) would end up being most intensively used in urban areas. ....More as a tool to increase profits for the larger agencies which would be tempted to "shuffle around" accountability, very possibly to the detriment of those incapacitated persons who have limited capacity and thus little ability to object.

f. The proposed delegation rules will surely undermine education goals. That is, interest on the part of agency employees in improving their knowledge and skill in delivering fiduciary services to incapacitated persons will be discouraged. Why, after all, should lower level staff strive for education and improvement of skills, when they can be allowed to do that same work without arduous training?

2. There are practical problems in the proposed text.

a. The text itself seems not to be well written. Problems (to the eye of a non-expert) include:
    1. The term "non-certified professional guardian" (under "a" in the first paragraph) does not have an accepted meaning in Washington State.
    2. The term "independent contractor" (of section "b" of the first paragraph) is excessively broad, and could conceivably include almost any person.
    3. The term "specifically approved by the Court" (following item "c" of the first paragraph) is unclear, as to whether "a" or "b" are included.

4. The term “final decision making authority” (in the first line of the second paragraph) is not accepted or well understood, as became apparent during the April 8th CPGB meeting at which the proposed SoP 404.3 was discussed.
5. The phrase “having considered” (preceding “a” in the second paragraph) is too vague to be meaningful.
6. The phrase “available to the Certified Professional Guardianship Board” (“c” of the second paragraph) fails to specify the meaning of “available”, for example, including no time frame or legibility parameters. Also, this feature may be in conflict with other policies, regulations, or practices.

b. The idea of submitting a “memo to file” justifying a delegation seems an ineffective and thus impractical “fig leaf” of protection. Neither AOC or Superior Court resources would likely to be available to review such files, or even assure that such files exist or are of sufficient quality.
   Indeed, I have not seen any law, regulation, or mandate for active monitoring that would assure, or govern either the existence or the review of such documents. Nor any standards for their content.

c. No guidelines or rules are presented for the writer of the “delegation” justifications, other than the brief and rather vague, “having considered” phrase, which says nothing in terms of objectives or justifications from a client-centered point of view.

d. As a practical matter, any breach of the interests of incapacitated persons due to this proposed regulation change would be VERY difficult for the CPGB, as certification and regulatory body, to detect.

e. Also the Superior Courts would be unlikely to find themselves with the time or the skills to detect lapses that occurred as a result of imprudent delegations or lack of monitoring of delegees.

3. Should some version of this SoP be passed, other requirements need to be considered.

a. It appears that a companion SoP is needed, which clearly defines **delegation and accountability**. If, as some board members have suggested, an agency is indeed the appointed guardian of an incapacitated person, my belief is that there should be a single certified professional guardian who shoulders and feels personally accountable for that designation of responsibility.

b. In practice, I would expect the “fig leaf” of a memo to file to have little practical effect, and soon to have no benefit at all.
   Only a formal Court review and approval of a **separate motion** could be effective. Such a request should not simply be incorporated /amalgamated into a “care plan” for (implicit, blanket) approval.

c. In connection with a Court motion for delegation, the agency should clearly report its number of guardians and guardianships, and the number and duration of such delegations.

d. An explicit motion justifying delegation, with documentation of agency context, would result in a public Court record. While awkwardly, NOT having , or NOT requiring this documentation to be formally filed could be construed by some as a tactic to avoid coming GR 31.1 requirements, as well as being an abridgement of incapacitated persons' rights to diligent care.

e. Caveats should be added to any SoP for delegation.
    1. Requirements / descriptions of allowable delegations should be specified. e.g., registered nurse, CPA, etc. (together with an indication of the sort of special circumstances that would justify such delegation).
    2. Where family or close friends are in the picture, their view or perhaps their consent should be sought, and accounted for in any motion presented in Superior Court.

4. Shortcomings in public deliberations and in voting.

a. As I recall, in late 2011 or early 2012 the topic of delegating meaningful visits was first justified as a way to increase the availability of paid guardian support in rural areas, where travel costs could be a deciding factor. Yet not long after, this idea seemed to be set aside and a "business model" justification on economic (or competitive) grounds emerged. This economic model (with an implicit lower-standard-of-service) has seemingly been carried forward, alone becoming the basis for justification. Supplemented, perhaps, by a defensive idea revolving around autonomy of guardians, and privacy regarding their decisions and records.

b. I have been surprised to see public comments from paid guardians that invoke the idea of privacy for guardian records. Court records for guardianships in Washington State are generally open, and have become more-so over recent decades. I find this appropriate, given that incapacitated persons have little opportunity and limited capacity to protect themselves, making it important that others have insight into their affairs. Also, I believe that guardians have an unusual freedom to do most of their work with minimal review, while operating as Court appointees who manage other people's lives and other people's money; already, some believe, with too little monitoring or scrutiny.

c. From a "layman's" point of view, it would appear that Board members with strong and direct financial interests, after contributing facts from their field experience and their viewpoints to discussions, might recuse themselves from voting on this delegation issue. It is not easy for outsiders to believe that interested parties will not have difficulty

achieving objectivity in their views, where a good deal of money may be involved.

5. Communication with the public and posting for comment have been problematic.

a. The proposed regulation's posting for public comment, given the importance and the controversy it and related topics have invoked, lacks needed explanation / justification text. Such text would, hopefully, raise some of the following issues:
    1. The background and history of this set of issues.
    2. How many times it has been voted on.
    3. That one CPGB Regulation Committee member presented a "minority" dissenting opinion to the Board in a full meeting, and why.
    4. The controversial "Resa Raven" case, and how some see a relationship to these issues.
    5. Where complex "substitute judgment" and "self -determination" issues might also to be considered.

b. The use of an existing section number (404.3) without noting that the existing 404.3 would be re-numbered (to 404.4) has been confusing to the uninitiated.

c. From my own point of view, the blocking of access to the Courts.wa web site from outside of USA, without notification or knowledge within AOC, or even a proper error message, has caused me considerable inconvenience. While this obstacle is surely not a responsibility of the CPGB, it has made navigating of documentation at hand unnecessarily difficult, so hopefully will not continue to be a problem in the future.

[redacted]

Tom Goldsmith

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[1] See Standards of Practice 401.1, *"Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly."*

[2] NGA standards have been evolving, with drafts formally published since 1991. See: http://www.guardianship.org/documents/Standards_of_Practice.pdf third edition, of 2007, which states, *"The guardian shall visit the ward no less than monthly."*

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26 September 2013

Certified Professional Guardian Board
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

RE: Proposed SOP 404.3, Meaningful Visit

I certainly understand the underlying concern driving this proposed change, and I certainly agree that every effort should be made to protect incapacitated persons from mistakes made by their guardians; however I also understand from local, state and national history the potential detrimental ramifications of laws and rules passed prematurely simply from the idea that doing something, doing anything at all, is better than doing nothing to try to remedy problems.

That definitely seems to be the case here. The CPG Board appears to be problem-solving in a vacuum, without regard for such considerations as:

- the role of the Superior Court in supervising professional guardians' performance of their duties (as demonstrated in the CPG Board's ongoing willingness to expand their authority to monitor and control the actions of professional guardians);
- the civil rights of business owners (as demonstrated, for example, in the proposal to require a guardianship firm to keep certain records and allow members of the CPG Board to rifle through their records at whim);
- the practicalities of business management (as demonstrated in the ongoing tendency to impose regulatory measures that directly impact the efficient management of a business);
- the liberty that business owners are supposed to be afforded to determine according to their insights, talents, and competencies how best to perform their duties; and

- the increasing need for experienced professional guardians to meet the demand of the increasing number of elderly persons in need of assistance, and the potential for the CPG Board's actions and misdirected requirements to cause practicing guardians to leave the industry, as well as discourage new businesses from developing.

If something has gone terribly wrong for an assisted person, due to a professional guardian's mismanagement of his/her/its duties, that is indeed a travesty and I certainly understand why the board would try to take measures to prevent any such thing from happening again on their watch; but is it really the CPG Board's job to do so? I think remedy lies more in working with the Superior Court, as the "Super Guardian" who oversees guardianship cases, to educate and implement monitoring systems.

I would strongly encourage the Board to take a step back and assess the scope of authority the members are asserting, in comparison to the original purpose of the certification program, because it seems to me that it is only a matter of time before a cluster of professional guardians realizes they are being unconstitutionally railroaded, and starts a class-action lawsuit against the CPG Board. [Please do not assume that I have anyone in mind when I say this, because I positively do not know of a single professional guardian or agency contemplating such action at this time.] Or worse, guardians will begin to pull away from the business, at a time when the demand for such services is dramatically increasing.

With utmost respect for the Board's motives and concerns,

Lynne M. Fulp, CPG 4754

Bridge Disability Ministries
building relationships of respect

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October 2, 2013

Certified Professional Guardian Board
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

RE: Comment on
Proposed Standards of Practice 413.1.1 Agency Ownership
Proposed Standard of Practice 404.3 Meaningful Visit

Greetings,

Please accept the following comments on the Agency Ownership.

Issue:

- 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?

  Response: Non-Profit Corporations, particularly those which are designated to be 501 (c) (3) should be exempt from any requirement requiring individual ownership, since by definition and purpose non-profit corporations cannot have "owners". Bridge Ministries Guardianship Agency, like other non-profit corporations is mission driven, with clearly defined bylaws, policies and procedures.

- Who is responsible for the professional work of a certified professional guardianship agency?

  Response: The two designated Certified Professional Guardians appointed by the agency.

Proposed SOP 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.

  Response: Change language to include: "professional guardians...who accept appointment by their agency, or their non-profit corporation to be the guardians designated to be accountable to the Washington state Standards of Practice.

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Please accept the following comments on the Meaningful Visit.

Meaningful Visit 404.3

Our agency does not have a problem with a CPG visiting initially or with CPG contact at least four times per year. It is our standard practice. We only have a problem with the requirement that the CPG visit "one visit every three months."

Dictating the timing of the visits interferes with the proper functioning of our agency. We respectfully request that the Board acknowledge that Bridge Ministries Guardianship Agency focuses its' service on people with Intellectual and Developmental Disabilities, and that this is very different from the paradigm of the dementia IP in a congregate care facility. Such facilities will often have quarterly case reviews, which would be good to have the CPG attend.

However, the IPs that Bridge Ministries Guardianship Agency serves, have several government and private agencies coordinating services to support our IPs living out in the community. We cannot control the timing of these various agencies mandating meetings which include the IP and their CPG.

These are very important times to engage the IP, in advocating for themselves, and stating preferences. The IP and CPG are also necessary at Individual Support Plan meetings with the Developmental Disabilities Administration at least once a year in the IP's home. The residential support agencies likewise have their own schedules of goal-setting meetings for the CPG and IP. Intellectual and Developmental Disabilities are heavily regulated by Washington State. The above are just some of the mandatory meetings in which our CPGs cannot control the time of year of the meetings.

Imposing a schedule of CPG visits in a one-size-fits-all manner is not necessary or prudent.

SOP 404.3 should be changed to read:

A certified professional guardian of the person, sole practioner or agency, must ensure that the initial in-person visit and then ~~one visit every three months~~ four visits per year is made by a certified professional guardian, unless otherwise approved by the court. For other meaningful in-person visits, a certified professional guardian, sole practioner or agency, may delegate the responsibility for in-person visits with a client to: (a) a non-guardian employee of the certified professional guardian, sole practioner or agency, (b) an independent contractor or (c) any individual who has been approved by the court. In all cases, before the delegation, a certified professional guardian with final decision making authority on the case must document

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the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. The documentation shall be: dated and signed by the certified professional guardian and maintained in the guardian's client file.

Respectfully submitted,

Patricia Croteau
Bridge Disability Ministries
Guardianship Agency Supervisor

Proposed SOP 404.3

- That a CPG must, on a quarterly basis, conduct the monitoring visit of each individual under guardianship.

  Response: As this requirement for a quarterly monitoring visit already exists for people who have a guardian of estate appointed, I assume that this newest amendment to the Standards of Practice would be as an extension of this requirement to those who have a Guardian of Person appointed. I also assume that one visit for people who are under both Guardianship of the Person and Estate would suffice. If these assumptions are correct, we would agree. I do not think people with both Estate and Person guardianship should require 2 visits each quarter by a CPG.

I thank you for this opportunity to respond. If I can be of further assistance, please let me know.

Sincerely,

Elizabeth Lindley, Executive Director, Lifetime Advocacy Plus

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Hello,

I read through the public comments to the proposed changes to SOP 404.3 and I noticed some focus on the National Guardian Association Standards of Practice. It is not clear from the comments that the writers realize the NGA Standards of Practice, unlike the CPG Board's Standards of Practice are not mandatory.

The Preamble to the NGA Standards of Practice states, "NGA has, therefore, adopted standards that we feel reflect realistically as possible the best or highest quality of practice." (Emphasis added). NGA standards are aspirational, Washington standards are minimum standards.

Thank you.

Deborah Jameson

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GSS

GUARDIANSHIP SERVICES OF SEATTLE

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September 26, 2013

Certified Professional Guardian Board
Administrative Office of the Courts
PO Box 41170
Olympia WA 98504-1170

RE: Comment
Proposed Standard of Practice 404.3 Meaningful Visit

Greetings,

Please accept the following comments on the visitation rule.

The basic requirement of the rule that care be applied to visitation is appropriate, and is not the subject of this comment.

Forty percent of the words in the proposed rule are not about what a guardian should do but about what documentation a guardian should have in their files, should there be delegation. This is objectionable. This opens the door to discipline based not on what the guardian did but on the record keeping of the guardian. The Board's focus should be on the guardian's actions. The Board should be concerned about what the CPG has done (or not done) for the incapacitated person, not what the CPG has done for the Board.

The requirement reflects the way things are done by most agencies already, and mostly just adds to the paperwork we will need to do. This is not a such a bad thing in this instance, but cumulatively the effect of multiple regulations of this sort is to set traps for less experienced or wary CPG's whose paperwork, if not their actual behavior, is found to be lacking. I respectfully suggest that there are more important matters than forms practice in guardianship that the Board and its investigators could attend to.

Here is a suggestion for a change to the wording.

SOP 404.3
A certified professional guardian of the person must personally make the initial in-person visit and then must personally visit every three months, unless otherwise approved by the court. For other meaningful in-person visits, a certified professional guardian or certified professional guardian agency may delegate the responsibility for in-person visits with a client to: (a) a non-certified professional guardian employee of the certified professional guardian or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian with final decision making authority on the case ~~must~~

~~document the suitability of the delegation, having considered:~~ shall consider (a) the needs of the client, and (b) the education, training and experience of the delegate. ~~The documentation shall be: dated and signed by the certified professional guardian and maintained in the guardian's client file.~~

Sincerely,

Tom O'Brien

Callie T. Dietz
State Court Administrator

Proposed SOP 401.6

The SOP was approved for public comment May 13, 2013, with a comment period which expired July 29, 2013. It was reposted on about August 16, 2013 with notification that it would be considered during October 14, 2013 board meeting.

Proposed Revised SOP:

Standby Guardian

SOP 401.6 All certified professional guardians ~~and guardian agencies~~ have a duty by statute to appoint a standby guardian. ~~In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction~~

401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court-appointed guardian per statutory requirements.

401.6.2 The standby guardian will serve when the guardian cannot be reached in an emergency, during planned absences and at the death or incapacity of the guardian.

401.6.3 The certified professional guardian will ensure that in his or her planned or unplanned absence the standby guardian shall have access to records and information needed to address the needs of the incapacitated person.

The Regulations Committee submits the following revision for Board consideration.

SOP 401.6 All certified professional guardians ~~and guardian agencies~~ have a duty by statute to appoint a standby guardian. ~~In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction~~

401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court-appointed guardian per statutory requirements.

401.6.3 The certified professional guardian will make available to the standby guardian those records and information needed to address the needs of the incapacitated person in the event of a planned or unplanned absence.

Applicable Statute: RCW 11.88.125 Effective July 28, 2013

1) ((The person)) Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby ((limited)) guardian or standby limited guardian to serve as ((limited)) guardian or limited guardian at the death ((or)), legal incapacity, or planned absence of the court- appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person ((entitled to)) who requested special notice under RCW 11.92.150 ((or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(j))). ((Such))

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(((2))) (b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 ((as now or hereafter amended)). The oath may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment ((shall be provided)) to the ((standby guardian, the)) incapacitated person and his or her spouse or domestic partner and adult children, ((and)) any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(c) The provisions of RCW 11.88.100 through 11.88.110 ((as now or hereafter amended)) shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of RCW 11.88.020, the court shall issue an order specifying: (i) The amount of bond as required by RCW 11.88.100 through 11.88.110 to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the duration the standby guardian or standby limited guardian will be acting; and (iv) the expiration date of the letters of guardianship to be issued to the standby guardian or standby limited guardian.
(c) Letters of guardianship consistent with the court's determination under (b) of this subsection shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100. The standby guardian or standby limited guardian shall give notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(d) The provisions of RCW 11.88.100 through 11.88.110 shall apply to standby guardians and standby limited guardians.

(4) In addition to the powers of a standby ((limited)) guardian or standby limited guardian as noted in ((subsection (1) of)) this section, the standby ((limited)) guardian or standby limited guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in ((RCW 11.92.040 as now or hereafter amended)) RCW 11.92.043, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Note:

- RCW 11.88.125 doesn't require a CPG to designate a CPG as standby.
- RCW 11.88.125 doesn't include anything regarding sharing information with the standby.
- RCW 11.88.125 doesn't address the qualifications of the standby.
-

Summary of Public Comments

Against Adoption

1. Already in RCW 11.88.125.
2. It is difficult to image that a CPG is not aware of the need to be properly informed.
3. SOP 401.6.1 contradicts 401.6.
4. When only a few CPGs serve a particular area who will be allowed to serve as standby?
5. Can the court have the authority to approve someone other than a CPG as standby?
6. RE: SB 5692 – has a length of time been designated for a planned absence?
7. SOP is ambiguous. – What is a planned absence?
8. Current statute works well – when I'm unable the facility has my contact information or information for a co-guardian.
9. We can be reached by cell phone anytime.
10. "We were in the Europe on a Cruise a year ago and we approved surgeries and kept up to date on clients with email and cell phones. We were visiting a cousin in Tennessee in the Appalachians and were able to approve an open heart surgery. When we were in Southern California for Dad's funeral services a hotel cooperated with receiving and sending a fax a few years ago to approve another surgery. When we were in Redlands, CA for my University reunion we kept up to date with clients and caregivers via cell phone and email. Earlier this month we were on a cruise to Alaska and kept up to date on one of our clients who was dying and agreed to Hospice for him via cell phone on the ship and a call from APS about possible new clients. All of these occurred within a few hours of receiving messages or emails and all the facilities knew we were gone and where to reach us. In fact, they reach us the same way whether we are in King County

Europe or a cruise ship. Why do we need to notify the courts or anyone else about our “planned absence”.”

11. Does not provide continuity of care.
12. The Board is presuming that the *only* people capable of maintaining continuity of care are my 268 fellow CPGs. This could be correct. However, I would suggest that it is far more likely that a non-CPG who is acquainted with the IP (e.g. a Case Manager, family member, staff person, nurse care manager, care provider, attorney, etc.) would be in a better position to maintain the IP’s continuity of care. That “non-CPG” most likely understands the IP’s needs, opinions, desires, preference, and general affairs. It is unlikely (though possible) that a CPG would be equally as qualified, especially on a temporary basis.
13. Ensure is too vague.
14. The requirement to ensure that records and information is available is a logistical nightmare.

Supporting partial adoption

1. Keep 401.6.1 delete the 2nd and 3rd paragraph.
2. Needs to explain the statute.

Public Comments

Tom O'Brien

I respectfully suggest that the Board not enact this revision. There is very little in the proposed change that is not already required under RCW 11.88.120, as amended effective July 28, 2013. There is not a good reason for professional guardian regulations to recapitulate statutory requirements. As a general rule there is danger in doing so. The same rule stated different ways can always lead to disputes based on highly technical differences in interpretation, and such disputes inevitably descend to absurdity. Laws can change, and such changes can lead to problems if they result in contradictory requirements between the statute and regulations. If there is need for a rule, this must be accepted, but in this instance the statute is perfectly adequate on its own to implement the desired requirements.

The only addition the proposed rule has to statutory requirements is section 401.6.3, requiring that Stand-by guardians taking over during a planned absence have access to necessary information. It is difficult to imagine that a Certified Professional Guardian is not aware of the need to be properly informed, and the weight of all of the other provisions in the Board's rules requiring due diligence is not significantly enhanced by this provision.

Cynthia Trenshaw

Perhaps I'm missing something here, but it does seem to me that SOP 401.6.1 contradicts 401.6

401.6 is modified by "it is the best practice" and "unless otherwise authorized by the local court with jurisdiction."

401.6.1 says "shall appoint."

After ten years of active service I have decided to retire from professional guardianship (though not from my GAL work), which means that Island County is down to one Certified Professional Guardian. I serve as the standby guardian for that CPG in all of her active cases.

May I continue to be her standby?
If not, whom should she choose to replace me?
Whom is she to choose when she is awarded the next guardianship in this county?
On which sentence of 401.6 shall we rely?

And does Island County Superior Court have the authority to approve someone other than a CPG for standby?

Sari Spieler, CPG

Regarding the requirement that all Standby Guardians for a Certified Professional Guardian also be a Certified Professional Guardian -

The supportive opportunity of having two CPGs in Island County is changing as the only other CPG in Island County is stepping down from being Certified. She has been serving as Standby Guardian for 3 wards I represent, and will willingly continue to do so. As her status changes to Professional Guardian (vs. Certified), I believe she is still the best qualified and capable to continue serving as standby guardian for these protected adults. I would request an exception to the SOP from the courts for all 3 wards, and not consider that a major breach of best practice.

In rural areas with few CPGs, there are likely good local candidates who are not certified. I acted as Standby Guardian to a Certified Guardian for 2 wards before becoming certified myself. It is important to have supervision and mentoring by Certified Guardians for non-certified individuals, so we can better meet the growing demands to protect our vulnerable adult population.

This dilemma is not unique to Island County, as CPGs in other rural or remote areas in the state are also challenged with the distance factor. For us, with bridges and ferries providing access, any standby guardian not on island has extensive travel time and associated costs to respond to emergencies, make regular visits, and deal with local resources on behalf of their wards. I believe it important for the CPG to have more choice and influence in who steps in when they are unavailable.

Also, I am asking for clarification regarding SB 5692, Item 3(a) that was adopted on 4/12/13 -
Has a length of time for a "planned absence" been designated in regards to petitioning the court, and informing the IP, family, facility and interested parties?
This requirement seems a burden to the guardian and the courts, and an added expense to the ward's estate if a guardian has a planned absence over a weekend or just a few days, versus being gone for a week or more. I agree with the responsibility to have the Standby Guardian and facility know any time a guardian has a planned absence of any length, but I'm not sure our courts will welcome the flood of paperwork required for brief absences.

Thank you for passing these thoughts along to the board for their consideration.

Michael Johnson

Dear CPG Board:

As a CPG and practicing attorney, I generally agree with the comments of Tom O'Brien. He should have been a lawyer.

I am not sure what precipitated this Proposed SOP. When I am out of town or out of state, the existing standby statute works well for my clients/IPs. Either the facility is aware of the statute and contact information of the IP, or a co-guardian with independent authority is available and the statute is not even triggered.

For all of my clients, the facility has a list of the contact information, including the standby guardian, and will contact the standby guardian if the guardian is not available. In some of my cases, there is a family member co-guardian with independent authority who can act, making a standby guardian redundant and unnecessary, a better arrangement which avoids triggering the standby statute. (Co-guardians have the additional benefit of avoiding the legal costs associated with appointing a successor guardian.) The statute adequately protects my clients/IPs.

Laws and rules are becoming incredibly complex and wordy. Language should be simplified to make them more accessible and understandable to IPs, the general public, as well as CPGs.

My primary concern about the Proposed 401.6 is that none of the language clearly explains what is expected of a CPG in addition to the statute. It seems like it contains a lot of well thought out but really unnecessary language because it duplicates the statute.

In addition, Proposed SOP 401.6.3 expresses a reasonable concern that CPGs should ensure a standby has access to records. But what is expected of CPGs in addition to the statute? What is a "planned or unplanned absence"? What does "will ensure" mean? Proposed SOP 401.6.3 actually makes what is expected of CPGs more ambiguous than what the statute says.

While I appreciate the work that went into drafting, in keeping with simplicity and accessibility why not a one-line statement that says something like, "When appropriate, a certified professional guardian should provide the standby guardian with access to records and information needed to address the needs of the incapacitated person."

Thanks for the opportunity to comment.

Ken and Sylvia Curry, CPGs

Thank you for the opportunity to comment on the CPG Board's new rule. We don't understand why it is necessary but if the Board feels that it is we would like to see clarification of "planned absence".

The whole thing around "planned absence" has us very confused. There is no definition in the Legislation or in the new rule of the CPG Board.

We may have the wrong version of the legislation but we thought we were supposed to notify the courts in the event of a "planned absence". The CPG Board doesn't seem to include that issue.

We don't believe that the rule is really necessary or at least it needs to acknowledge that we are in the 21st century with cell phones, email, etc. available to us.

We have a trip to visit a client in Bellingham every two months. The way the legislation reads, we should notify the court and get the standby guardian ready. We have cell phones and email and are in constant contact with the caregivers for our clients.

We were in the Europe on a Cruise a year ago and we approved surgeries and kept up to date on clients with email and cell phones. We were visiting a cousin in Tennessee in the Appalachians and were able to approve an open heart surgery. When we were in Southern California for Ken's Dads funeral services a hotel cooperated with receiving and sending a fax a few years ago to approve another surgery. When we were in Redlands, CA for my University reunion we kept up to date with clients and caregivers via cell phone and email. Earlier this month we were on a cruise to Alaska and kept up to date on one of our clients who was dying and agreed to Hospice for him via cell phone on the ship and a call from APS about possible new clients. All of these occurred within a few hours of receiving messages or emails and all the facilities knew we were gone and where to reach us. In fact, they reach us the same way whether we are in King County Europe or a cruise ship. Why do we need to notify the courts or anyone else about our "planned absence".

The rule should at least state that Guardians may keep in touch with caregivers and facilities during "planned absences" via cell phone or internet.

GERALD W. NEIL
CHRISTOPHER E. NEIL
DEBORAH J. JAMESON

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July 31, 2013

Certified Professional Guardian Board
Sent via email.

Re: Standard of Practice Revisions
401.6 Standby Guardian

Dear CPG Board:

I am writing to comment on the proposed change to Standard of Practice (SOP) 401.6. The following is an underscore ~~strike through~~ version of that SOP so you can easily see your proposed changes.

SOP 401.6 All certified professional guardians and guardian agencies have a duty by statute to appoint a standby guardian. In appointing a standby guardian it is the best practice to appoint a certified professional guardian unless otherwise authorized by the local court with jurisdiction.

401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court-appointed guardian per statutory requirements.

SOP 401.6.2 The standby guardian will serve when the guardian cannot be reached in an emergency, during planned absences and at the death or incapacity of the guardian.

SOP 401.6.3 The certified professional guardian will ensure that in his or her planned or unplanned absence the standby guardian shall have access to records and information needed to address the needs of the incapacitated person.

My understanding is this proposed change was prompted by a revision to the Standby Guardian law (RCW 11.88.125) created by Senate Bill 5692 in the 2012-2013 legislative session. The new law gives guardians (both professional and lay) new techniques to provide a *continuity of care* to Incapacitated People if the appointed

guardian is unavailable. Providing continuity is one of the paramount duties of a guardian.

Your proposed revision of the SOP does not provide *continuity of care*. In fact, it does just the opposite.

Your proposal (which is now internally inconsistent[1]) mandates that the Standby Guardian must be a CPG, to wit: "401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian".

By creating this mandate (401.6.1) the Board is presuming that the *only* people capable of maintaining continuity of care are my 268 fellow CPGs. This could be correct. However, I would suggest that it is far more likely that a non-CPG who is acquainted with the IP (e.g. a Case Manager, family member, staff person, nurse care manager, care provider, attorney, etc.) would be in a better position to maintain the IP's continuity of care. That "non-CPG" most likely understands the IP's needs, opinions, desires, preference, and general affairs. It is unlikely (though possible) that a CPG would be equally as qualified, especially on a temporary basis.

Also, this well-meaning proposal (401.6.1) does not comport with the realities of the work of a guardian. In most cases, there will be no CPG sufficiently acquainted with the IP to provide the highest continuity of care.[2] The use of a non-CPG as Standby Guardian: (a) could likely be in the best interest of the IP, (b) may better comport with the IP's preferences, and (c) should not be removed from the pool of potential candidates for Standby Guardian.

The new third paragraph (401.6.2) describes the duties of the Standby. This summary is unnecessary and provides an overly-brief, incomplete description of the Standby Guardian law. CPGs are already required to know the law (SOP 401.3); thus, creating this incomplete summary is unnecessary, duplicative, and likely to create confusion.

The new final paragraph (401.6.3) suggests that the guardian must "ensure" that information is available to the Standby. If the Standby is well acquainted with both the IP and the Guardian, this is already being done. But when the Standby must be another CPG – perhaps a CPG unacquainted with the IP or the Guardian - this is a logistical nightmare.

[1] In the preceding paragraph of the SOP (401.6), using a CPG as a Standby Guardian is a "best practice", but it is not required. Yet in the next paragraph it is mandatory. At the very least I would suggest that the two adjoining paragraphs of the SOP use the same terminology: either "shall" or "best practice", but not both – it is confusing.

[2] Except, of course when a CPG Agency is the guardian and one of the agency's CPGs serve as the Standby.

This standard to "ensure" that "records and information needed to address the needs of the incapacitated person" is extremely broad, vague and imprecise. In practical terms it is unclear how a Guardian would "ensure" this be done. Of course, in hindsight one might know, after the fact, that the Guardian did not "ensure" that necessary information was shared. However using the proposed language prospectively the Board is providing no objective standard of what "must" be done as a "minimum standard"[3] to ensure the information is available. It is impossible for a Guardian to comply when the *standard* is so vague.

For example:

- The Guardian could have a medical emergency on any day (say a heart attack) that would require the Standby to act. Must the Guardian give up the password for their email system and carbon all emails to the Standby Guardian so that the most current (necessary) communication about the IP?
- Does the Standby get keys to the office and the combination to the safe where the passcodes are kept? d
- Does the Standby participate in weekly staff meetings to discuss the client's needs?
- Does the Standby get memos quarterly, monthly, weekly, or daily on each client's situation?
- How much information is enough to "ensure" that the Standby has all of the "information needed"?

This final paragraph is a good idea, but it is not an objective, discernable standard by which all CPGs can be disciplined. It is subjective, based upon the facts of the case. This idea would be best placed in an aspirational "best practices" section of the regulations, and is too imprecise to be "a minimum standard of practice which a professional guardian shall meet" GR23(c)(2)(ii)(emphasis added). The board should not enact this section.

I would respectfully request that the Board not enact these revisions to Standard of Practice 401.

Very truly yours,

CHRISTOPHER E. NEIL

CEN/es

[3] GR 23(c)(2)(ii) Standards of Practice. The Board shall adopt and implement policies or regulations setting forth *minimum standards* of practice which professional guardians shall meet. (emphasis added)

July 23, 2013

Certified Professional Guardianship Board
Judge James Lawler, Chair
c/o Washington State AOC
PO Box 41170
Olympia WA 98504-1170

Kimberly Bzotte
Guardian Program
AOC
PO Box 41170
Olympia WA 98504-1170

RE: Proposed Regulation 401.6

Proposed Regulation 401.6 addresses the duty of guardians to appoint a standby guardian. WAPG has reviewed the proposed Rule and in doing so notes that the Board has removed language which provides for the appointment of a standby guardian who is not certified.

While the usual practice involves the assignment of the standby guardian without Court review, WAPG recommends that the proposed Rule be amended to recognize the authority of the Court when in those circumstances the guardian and the parties determine that a non-professional standby is warranted. WAPG's recommended language is as follows:

401.6.1 All certified professional guardians shall appoint a standby guardian who is a certified professional guardian who accepts the appointment and has the skills, experience and availability to assume responsibility as court appointed guardian per statutory requirements *unless otherwise authorized by the Court.*

Proposed Regulation 401.6.2 simply repeats the language of the RCW 11.88. It is not clear to WAPG that a mere repetition of the language in the statute adds understanding to the requirement. For the sake of administrative efficiency WAPG recommends that this section be removed.

Proposed Regulation 401.6.3 adds confusion because it is not consistent with the two rules which precede it. The proposed Regulations 401.6.1 and 401.6.2 attend to circumstances of death, incapacity, emergencies, and planned absences while 401.6.3 addresses the sharing of information only in circumstances of planned or unplanned absences. In limiting the authority of this Regulation to only the concept of "absences" the Regulation causes confusion as to the circumstances of death, incapacity and emergencies. In addition, the proposed Regulation creates some confusion by introducing the concept of the *unplanned absence,* a new and undefined term not contained in RCW 11.88.

Summary: The only utility of the proposed Regulation 401.6.1, that portion of the Standard which is not already clearly addressed in RCW 11.88, is to provide guidance as to who the appointed standby guardian should be. If the Board desires to add greater emphasis to the principle of the appointment of a professional guardian as a standby guardian WAPG recommends it do so as outlined above in WAPG's proposed modification of 401.6.1

WAPG recommends removing the proposed Regulation 401.6.2 as being redundant.

If the Board intended proposed Regulation 401.6.3 to provide a Standard of Practice in circumstances of death, emergency, and incapacity as well as planned absences the proposed Regulation should include those elements, and should be written to provide clarity as to when, how and what kind of information is to be shared; how the professional fees of the guardian and standby guardian are to be assigned; and, how the confidentiality of incapacitated persons are to be secured.

Sincerely,

Glenda Voller, CPG

Glenda Voller, CPG
President, Washington Association of Professional Guardians
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Is anyone anywhere going to give a definition of “planned absences”. We go on client visits from Kent to Bellingham, cruises, visits to granddaughter in Oregon and son in California. We have our cell phone and computer with us. We have approved services from Tennessee, Europe, California, etc. No one knows when they call us whether we are in Kent or somewhere else. I have tried the CPG Board before, my Legislators and WAPG and no one seems to have a definition.

However, I believe my attorney had the best definition and hope the CPG Board will seriously consider adopting it: “I think of a planned absence as going in for an operation or going to the south pole. Out of contact, unable to manage your case load. Absence is not a reference to geographical location but rather inability to manage your case load.”

How about adopting that change??

Ken and Sylvia Curry, CPG’s
Your Advocates, CPGA

Greetings,

It is my understanding that the commend period on proposed SOP 401.6 has been extended until October 4, 2013.

I recommend that Proposed Standards of Practice 401.6 should not be enacted for the following reasons:

1. This SOP is in part duplicative of an existing statute existing statute, and in part the rule goes beyond the statute creating contraints not envisioned in the statute. Who may serve as standby guardian is governed by statute, not rule. It appears that the CPG Board is drafting a statute here.

2. There is no imaginable benefit to the Incapacitated Person or to the practice of guardianship in limiting who may serve as standby guardian.

3. This one-size-fits-all rule does not acknowledge that every guardianship is a unique situation with unique factors, family dynamics, and personalities. In some cases, it may be more appropriate to name a family member or other individual closely involved in the Incapacitated Person's life than a CPG with no knowledge of the case. In other cases, there may not be any available or nearby CPGs to serve as standby. What happens in this case?

4. Section 406.1.3 requires the CPG to provide the standby guardian with access to "records and information need to address the needs of the incapacitated person." This would be logistically impossible for most individual CPGs or small agencies who do not have the resources to digitize all of their records and make them available to an outside party. Is the standby entitled to access all records? How does the CPG give access to the standby while maintaining

confidentiality requirements for other clients or business records? How does the CPG comply with this rule while not violating HIPAA?

Thank you for your consideration of my comments.

Respectfully,

Christopher J. Fast, CPG
Reed Longyear Malnati & Ahrens, PLLC
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