

# Meeting Minutes

## November 8, 2021



## Certified Professional Guardianship Board

Monday, November 8, 2021

Zoom Meeting

7:00 a.m. – 9:00 a.m.

### DRAFT Meeting Minutes

#### Members Present

Judge Diana Kiesel, Chair  
Judge Grant E. Blinn  
Judge Robert A. Lewis  
Ms. Kristina Hammond  
Ms. Lisa Malpass  
Ms. Melanie Maxwell<sup>1</sup>  
Mr. William P. Reeves  
Dr. K. Penney Sanders  
Mr. Dan Smerken  
Ms. Susan Starrfield<sup>2</sup>  
Ms. Amanda Witthauer  
Dr. Rachel Wrenn

#### Members Absent

#### Staff Present

Ms. Stacey Johnson  
Ms. Kathy Bowman  
Ms. Thai Kien  
Ms. Kay King  
Mr. Samar Malik  
Ms. Rhonda Scott  
Ms. Eileen Schock  
Ms. Sherri White

**Guests: listed on last page**

#### 1. Meeting Called to Order

Judge Diana Kiesel called the November 8, 2021 CPG Board meeting to order at 7:06 a.m.

#### 2. Welcome, Roll Call and Approval of Minutes

Judge Kiesel welcomed Board members, staff, and members of the public.

**Motion:** A motion was made and seconded to approve the minutes of the October 11, 2021 CPG Board meeting as written. The motion passed.

#### 3. Chair's Report

Judge Kiesel noted an incorrect meeting date is listed on the CPG Board Calendar for December 2021. The next meeting of the Board will be on December 13, 2021 beginning at 8:00 a.m.

Judge Kiesel reminded all Board members of the Board's Mission Statement and the importance of attending meetings. It was announced Commissioner Cadine Ferguson-Brown has been appointed to serve on the Board, filling the vacancy left by Judge Anderson. Judge Kiesel next mentioned the work Dan Smerken has done with the University of Washington, writing scripts for mock video training. Judge Kiesel invited Board members to attend

<sup>1</sup> Ms. Maxwell joined the meeting at 8:20 a.m.

<sup>2</sup> Ms. Starrfield joined the meeting at 7:58 a.m.

committee meetings ad-hoc if interested, however, members participating ad-hoc would not vote on committee decisions.

#### **4. Grievance Report**

Staff reported there were five (5) new grievances received, and seven (7) grievances were dismissed for no actionable conduct during the month of October. There are currently thirty-six (36) open grievances remaining in investigation status. Twenty-five (25) of these open grievances concern seven (7) CPGs or CPGAs with two or more grievances.

#### **5. Regulations Committee**

After posting for public comment, and reviewing the comments received, the Board was asked to consider the approval of Regulations 400, 401, 402, 403, 405, and 406, effective January 1, 2022.

**Motion:** A motion was made and seconded to approve Regulations 400, 401, 402, 403, 405, and 406, effective January 1, 2022. The motion passed.

The Board was asked to consider the approval of Regulations 407 and 408, with minor amendments to Regulation 407.5.1 and 408.2 due to Stakeholder comments received on November 5.

**Motion:** A motion was made and seconded to approve Regulations 407 and 408, as amended, effective January 1, 2022. The motion passed.

The Board was asked to consider posting amendments to Regulation Series 000, 200, 300, 500, 600 and 700 for publication for notice and comment.

**Motion:** A motion was made and seconded to publish for notice and comment Regulation Series 000. The motion passed.

**Motion:** A motion was made and seconded to publish for notice and comment Regulation Series 200. The motion passed.

**Motion:** A motion was made and seconded to publish for notice and comment Regulation Series 300. The motion passed.

**Motion:** A motion was made and seconded to publish for notice and comment Regulation Series 500. The motion passed.

**Motion:** A motion was made and seconded to publish for notice and comment Regulation Series 600 and 700. The motion passed.

Judge Kiesel presented two versions of additional amendments to Regulation 404 for discussion. Mr. Smerken reported that Washington Association of Professional Guardians (WAPG) wants the focus of Regulation 404 to be on the quality versus the frequency of CPG visits with their appointed clients. There was discussion about defining meaningful contact, and tailoring contact to the client's needs. There was agreement that proposed amended Regulation 404, version 1, gives clear guidance of what is expected of the CPG, and provides for alternate meaningful contact. Judge Kiesel asked Board members for a show of hands in support of Regulation 404 version 2 as presented, and there were none. There was further

conversation regarding adding a requirement of at least one in-person visit per year to Regulation 404.

Judge Kiesel called for a show of hands in support of amended Regulation 404, version 1 as presented. (Witthauer, Lewis, Smerken, Reeves, Sanders, Kiesel)

Judge Kiesel next called for a show of hands in support of amended Regulation 404, version 1, *adding visitation once per year in person*. (Malpass, Hammond, Blinn, Starfield, Wrenn)

By show of hands, the majority of the Board supported amended Regulation 404, version 1 as presented. Due to the nature of the additional amendments in response to stakeholder comments, Regulation 404 will be re-posted for notice and comment.

#### 6. Executive Session (Closed to Public)

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

On behalf of the Applications Committee, Judge Lewis presented the following application for Certified Professional Guardian. The Applications Committee abstained.

**Motion:** A motion was made and seconded to conditionally approve Kippy McElya's application for certification upon completion of the UW Certification Program, with transferrable skills in financial and business. The motion passed.

#### 8. Wrap Up/Adjourn

The next meeting of the Board will be held by Zoom on December 13, 2021 at 8:00 a.m. The November 8, 2021 CPG Board meeting was adjourned at 8:46 a.m.

### Recap of Motions from November 8, 2021

Motion Summary	Status
<b>Motion:</b> A motion was made and seconded to approve the October 11, 2021 Certified Professional Guardianship Board meeting minutes as written.	Passed
<b>Motion:</b> A motion was made and seconded to approve Regulations 400, 401, 402, 403, 405, and 406, effective January 1, 2022.	Passed
<b>Motion:</b> A motion was made and seconded to approve Regulations 407 and 408, as amended, effective January 1, 2022.	Passed
<b>Motion:</b> A motion was made and seconded to publish for notice and comment Regulation Series 000.	Passed

<b>Motion:</b> A motion was made and seconded to publish for notice and comment Regulation Series 200.	Passed
<b>Motion:</b> A motion was made and seconded to publish for notice and comment Regulation Series 300.	Passed
<b>Motion:</b> A motion was made and seconded to publish for notice and comment Regulation Series 500.	Passed
<b>Motion:</b> A motion was made and seconded to publish for notice and comment Regulation Series 600 and 700.	Passed
<b>Motion:</b> A motion was made and seconded to approve Kippy McElya's application for certification upon completion of the UW Certification Program with transferrable skills in financial and business.	Passed

**Guests:**

Dan Jackson  
Debi Lawrence  
David Lord  
Neil & Neil  
Puget Sound Guardians (Karen Klem Newland)  
Deborah Jameson  
HendeKA  
Katlyn Balsam  
Sarah Tremblay  
Mark Vohr  
Michael Letts  
Elaine morgan  
Brenda Morales  
Leesa Arthur  
Caroline Wood

# Grievance Report

## Certified Professional Guardians Grievance Status

Month-End

November 30, 2021

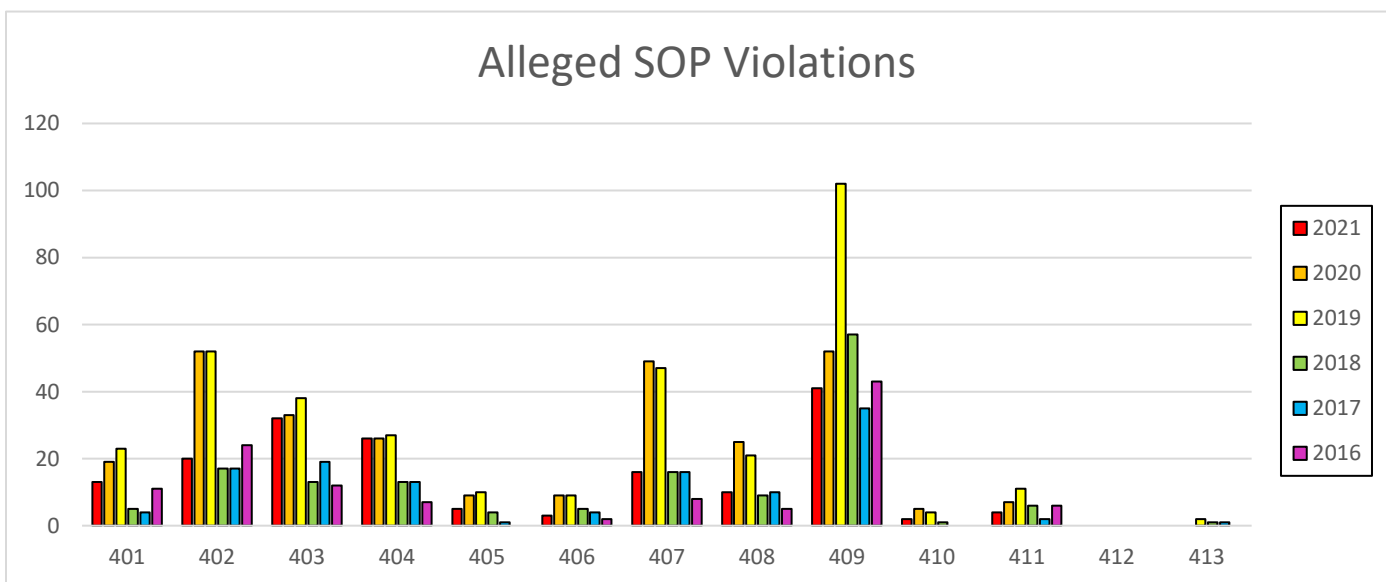
Grievance Status – November 30, 2021	2021	2020	2019	2018	2017	2016	Total
New Grievances Received:	6	0	0	0	0	0	6
Grievances Resolved this Month:	[5]						[5]
Grievances Remaining Requiring Investigation*:	27	7	4	1	0	0	39

Grievances Pending*	2021	2020	2019	2018	2017	2016	Total
Voluntary Surrender/Litigation:							
Conflicts Review Committee:	1		1				2
ARD:						1	1
Complaint/Hearing:							
Administrative Decertification:							
Total Pending:	1		1			1	3

**[\*Grievances in Pending status are not counted as Grievances Requiring Investigation.]**

Resolution of Grievances – November 30, 2021	2021	2020	2019	2018	2017	2016	Total
Dismissal – No Jurisdiction	1						1
Dismissal – No Actionable Conduct	3						3
Dismissal - Administrative							
Dismissal – Insufficient Grievance	1						1
Mediated – Dismissed							
Advisory Letter 507.1							
ARD - Admonishment							
ARD - Reprimand							
ARD - Suspension							
Terminated – Voluntary Surrender							
Terminated – Administrative Decertification							
Terminated – Decertification							
<b>Total Resolved Grievances: November 30, 2021</b>	<b>5</b>						<b>5</b>

<b>Grievance Resolutions</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>Total</b>
<b>Total Grievances Received</b>	<b>84</b>	<b>80</b>	<b>77</b>	<b>85</b>	<b>104</b>	<b>104</b>	<b>534</b>
Dismissal – No Jurisdiction	7	21	15	22	30	20	115
Dismissal – No Actionable Conduct	43	41	38	51	60	55	288
Dismissal - Miscellaneous							
Dismissal – Insufficient Grievance	6	6	5	3	1	2	23
Mediated – Dismissed							
Advisory Letter 507.1		2	5	3	2	4	16
ARD - Admonishment							
ARD – Reprimand		1		1	1	4	7
ARD - Suspension							
Termination – CPG Death							
Termination – Administrative Decertification	3	1	3	1	1	3	12
Termination – Voluntary Surrender			1	2	8	15	26
Termination – Decertification			5	1	1		7
<b>Grievances Resolved To Date: November 30, 2021</b>	<b>59</b>	<b>72</b>	<b>72</b>	<b>84</b>	<b>104</b>	<b>103</b>	<b>494</b>



#### 400 Standards of Practice Regulations

- 401 Guardian's Duty to Court
- 402 Guardian's Relationship to Family and Friends of Incapacitated Person and to Other Professionals
- 403 Self-Determination of Incapacitated Person
- 404 Contact with the Incapacitated Person
- 405 General Decision Standards
- 406 Conflicts of Interest
- 407 Residential Decisions
- 408 Medical Decisions
- 409 Financial Management
- 410 Guardian Fees and Expenses
- 411 Changes of Circumstances/Limitation/Termination
- 412 Sale or Purchase of Guardianship Practice
- 413 Responsibilities of Certified Public Guardian Agencies



## Pending Grievances Involving Guardians with Multiple Grievances

November 30, 2021

ID	Year Cert.	Open	Year(s) Grievances Received
A	2015	2	2021 (2)
B	2016	5	2021 (7)
C	2014	5	2019 (1), 2020 (2), 2021 (1)
D	2011	2	2021 (2)
E	2007	4	2019 (1), 2020 (1), 2021 (2)
F	2002	2	2021 (2)
G	2001	6	2018 (1), 2019 (1), 2020 (4)
		26	

**Of 39 currently open grievances requiring investigation, 26 concern 7 Agencies/CPGs with 2 or more open grievances.**

## Regulations for Consideration of Approval with Effective Date January 1, 2022

- 410, 411, 412, 413, 414, and 415
- 409

## Guardianship and Conservatorship Program Rules Regulations

### 410 Guardian and Conservator Fees and Expenses

410.1 The guardian and/or conservator is entitled to reasonable compensation for services rendered on behalf of the ~~incapacitated person individual subject to guardianship and/or conservatorship.~~ The guardian or conservator has a duty to conserve the estate, property and finances of the ~~incapacitated person individual.~~ Accordingly, decisions to provide services and incur fees shall be made in such a way as to reflect this duty. ~~Services requiring a minimal degree of training, skill and experience should be billed accordingly.~~

410.2 All compensation for the services and expenses of the guardian and/or conservator shall be documented, reasonable in amount, and incurred for the ~~incapacitated person's welfare of the individual. welfare.~~ ~~The guardian shall not pay or advance himself/herself fees or expenses from any source except as approved by the court.~~ Billing for services shall not exceed the typical amounts paid for comparable services in the community, at a rate for which the service can be performed in the most efficient and cost-effective manner. The guardian or conservator shall review each of the following factors in determining the reasonableness of ~~his/her their~~ fee: ~~(a) the necessity of the service, (b) the time required, (c) the degree of skill and experience required to perform the service, and (d) the cost of any reasonable alternative~~

410.2.1 The necessity and quality of the services provided;

410.2.2 The experience, training, professional standing, and skills of the guardian or conservator;

410.2.3 The difficulty of the services performed, including the degree of skill and care required;

410.2.4 The conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

410.2.5 The effect of the services on the individual;

410.2.6 The extent to which the services provided were or were not consistent with the guardian's plan or conservator's plan; and

410.2.7 The fees customarily paid to a person that performs a like service in the community.

RCW 11.130.105 (3)

410.3 A guardian and conservator shall not pay or advance to themselves fees or expenses from any source except as approved by the court. When requesting court approval, the guardian and conservator shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship and/or conservatorship case to the court and ~~parties entitled to notice~~ to notice parties. ~~The guardian shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.~~

410.4 The guardian and conservator shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

410.45 The duties of a guardian and conservator to an ~~incapacitated person~~ individual subject to guardianship and/or conservatorship are not conditioned upon the person's ability to compensate the guardian and conservator.

~~410.56 If the guardian is also an attorney, billings shall be in accordance with RCW 11.92.180. The guardian and conservator may charge fees for time spent opposing a modification, termination, or removal sought by an individual subject to guardianship and/or conservatorship only to the extent the court determines the opposition was reasonably necessary to protect the interests of the individual.~~

RCW 11.130.105 (7)

## Guardianship and Conservatorship Program Rules Regulations

### 411 Changes of Circumstances/~~Limitation~~Modification/Termination

411.1 The guardian and conservator has an affirmative obligation to be alert to changes in the ~~incapacitated person's-~~ individual subject to guardianship and/or conservatorship's condition or circumstances, to seek out information that will provide a basis for termination or modification, and report to the court when ~~an increase or reduction~~ a modification or termination in the authority of the guardian and/or conservator should be considered.

411.1.1 A guardian or conservator shall immediately (but not later than thirty days) notify the court if the condition of the individual has changed so that the individual is capable of exercising rights previously removed.

411.1.2 A guardian shall file with the court within thirty days of any substantial change in the condition of the individual under guardianship or any changes in the residence of the individual and shall provide a copy of the notice to the individual and any notice parties.

411.1.3 A conservator shall notify the court within thirty days of any substantial change in the value of the property of the individual subject to conservatorship and shall provide a copy of the notice to the individual, any notice parties, and schedule a hearing for the court to review the adequacy of the bond or other verified receipt.

RCW 11.130.325 (6) (7)

RCW 11.130.505 (13) (14)

~~411.2 The guardian and conservator shall seek out information that will provide a basis for termination or limitation~~ modification of the guardianship and/or conservatorship.

~~411.3 Upon indication that termination or limitation~~ modification of the guardianship and/or conservatorship order is warranted, the guardian and conservator shall request court action.

411.42 The guardian and conservator shall assist the ~~incapacitated person-~~ individual to terminate or ~~limit-~~ modify the- a guardianship and/or conservatorship and arrange for independent representation for the ~~incapacitated person-~~ individual when necessary.

411.2.1 If an individual seeks to modify or terminate a guardianship and/or conservatorship, or remove the guardian or conservator, the guardian or conservator shall inform the individual of their right to counsel of their choice. The guardian or conservator shall obtain independent counsel if feasible, or request court appointed counsel for the individual.

RCW 11.130.315 (2) (a)

RCW 11.130.355 (7)

RCW 11.130. 425 (2) (a)

RCW 11.130.570 (9)

411.5 If the guardianship and/or conservatorship is a limited guardianship and/or limited conservatorship, the guardian or conservator shall report to the court when there are circumstances in which the ~~incapacitated person-~~ individual subject to guardianship and/or conservatorship appears to require assistance which exceeds the authority of the guardian or conservator.

411.6 If ~~the guardianship is of the person only~~ a guardianship has been established, the guardian shall ~~report to the court when protection of the incapacitated person's estate may be necessary~~ bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the individual's property.

RCW 11.130.325 (3) (a)

411.7 If ~~the guardianship is of the estate only~~ a conservatorship has been established, the ~~guardian-conservator~~ shall report to the court when protection of the ~~person~~ individual through a guardianship or protective arrangement instead of guardianship may be necessary.

## Guardianship and Conservatorship Program Rules Regulations

### 412 Sale or Purchase of Guardianship- and/or Conservatorship Practice

412.1 A certified professional guardian and conservator may choose to sell all or substantially all of a guardianship and/or conservatorship practice to another certified professional guardian and conservator, including goodwill, subject to the following guideline: to the extent that the sale of the practice contemplates a substitution of guardian and/or conservator for any of the guardian and conservator's current clients, court approval, with notice to all ~~incapacitated persons- individuals~~ subject to guardianship and/or conservatorship and all notice parties, shall be obtained at least 60 days before completing the sale. Regardless of whether any sale or transfer occurs, a guardian and conservator remains subject to all of these standards with respect to any ~~incapacitated persons- individuals~~ the guardian and conservator is appointed for, including the duty to ensure continuity of care, until the guardian and conservator is discharged by the court.

## Guardianship and Conservatorship Program Rules Regulations

### 413 Responsibilities of Certified Professional Guardian and Conservator Agencies

413.1 The designated Certified Professional Guardian and Conservator (CPGC) is responsible for the actions of the agency for which they serve as designated CPGC.

413.2 A CPGC is bound by the Standards of Practice notwithstanding that the professional guardian and conservator acted at the direction of another person.

413.3 A designated CPGC shall make reasonable efforts to ensure that the conduct of non-guardian and conservator agency employees is compatible with the professional obligations of the professional guardian and conservator.



## Guardianship and Conservatorship Program Rules Regulations

### 414 Delegation

414.1 If a Certified Professional Guardian and Conservator (CPGC) delegates a power to an agent, the CPGC shall exercise reasonable care, skill, and caution in:

#### 414.1.1 Selecting the agent

414.1.2 Establishing the scope and terms of the agent's work in accordance with the guardian's plan or the conservator's plan;

414.1.3 Monitoring the agent's performance and compliance with the delegation

414.1.4 Redressing an act or omission of the agent which would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator

414.1.5 Ensuring a background check is conducted on the agent, or conducted on persons employed by the agent when those persons are providing services to the individual subject to a guardianship or conservatorship

### RCW 11.130.125 Use of Agent by Guardian or Conservator

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 <sup>2</sup>that are available to the public.

<sup>2</sup> 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.

## Guardianship and Conservatorship Program Rules Regulations

### 415 Record Keeping

415.1 Professional guardian and conservators shall maintain complete and accurate records of all guardianship and/or conservatorship cases for which they are appointed. The records shall be retained for a minimum period of seven (7) years from the earlier of the time the guardianship and/or conservatorship case is closed, or the guardian and conservator's removal from the case has been approved by the court.

415.2 The designated Professional Guardian and Conservator shall manage the CPGC Agency record keeping so that complete and accurate records are maintained for all guardianship and/or conservatorship cases of the agency. The records shall be retained for a minimum period of seven (7) years from the earlier of the time the guardianship and/or conservatorship case is closed, or the CPGC Agency's removal from the case has been approved by the court

## Guardianship and Conservatorship Program Rules Regulations

### 409 Financial Management

409.1 A guardian or conservator may only exercise authority over the property and finances of an individual as allowed by statute or ordered by the court.

409.12 The guardian and conservator shall assure competent management of the property, ~~and income-~~ finances and estate of the ~~estate~~individual. In the discharge of this duty, the guardian and conservator shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate, property and finances shall be documented by means of accurate and complete records of all transactions.

409.12.1 The guardian and conservator shall meet with the ~~incapacitated person~~ individual and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the ~~incapacitated person-~~ individual and to obtain historical information about the ~~incapacitated person's-~~ individual's prior management of financial affairs.

409.12.2 The guardian and conservator shall, subject to court direction, allow the ~~incapacitated person-~~ individual to manage funds to his or her ability when appropriate.

409.2.3 A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the duties as conservator.

RCW 11.130.505 (8)

409.23 The guardian and conservator shall know and obey the law related to managing an individual's ~~incapacitated person's~~ estate, property and finances. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW ~~11.88 and 11.92~~ 11.130, and laws relating to employment, income, and taxes. The guardian and conservator shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.

409.4 A guardian shall conserve any funds and other property of the individual not expended for the individual's current needs for support, care, education, health and welfare for the individual's future needs, but if any conservator has been appointed for the individual, pay the funds and other property at least quarterly to the conservator to be conserved for the individual's future needs.

RCW 11.130.325 (3) (b) (c)

~~409.3-6~~The guardian and conservator shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

~~409.47~~ The guardian and conservator shall manage the estate, property and finances of the individual with the primary goal of providing for the needs of the ~~incapacitated person~~ individual.

~~409.58~~-In certain cases, the guardian or-conservator shall consider the needs of the ~~incapacitated person's~~individual's dependents for support, ~~or maintenance, care, education, health, or welfare.~~provided appropriate authority for such support is obtained in advance. The wishes of the ~~incapacitated person~~individual as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the ~~incapacitated person~~ individual and the advantages and disadvantages to the ~~incapacitated person~~ individual of such support or maintenance.

~~409.6-9~~ When the available estate, property and finances of the ~~incapacitated person~~ individual are sufficient, the guardian and conservator may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the ~~incapacitated person~~ individual, bearing in mind both foreseeable requirements of the ~~incapacitated person~~ individual and the advantages and disadvantages to the ~~incapacitated person~~ individual of such gifts, including tax consequences. If appropriate with decision making standards, the conservator may petition the court to structure the finances of the individual to establish eligibility for a public benefit including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties.

RCW 11.130.435 (o)

~~409.710~~-The guardian and conservator shall ~~should~~ apply for all public and insurance benefits for which the ~~incapacitated person~~ individual is eligible, taking into account the net benefit to the individual's finances and estate and taking into account the preferences of the individual. When implementing necessary changes in the ~~incapacity person's~~ individual's lifestyle, the guardian and conservator shall seek to minimize the stress of any transition.

~~409.8-11~~ Except when inconsistent with the conservator's duties under RCW 11.130.505 (1) through (4) addressing fiduciary duties, self-determination and the individual's retained decision making, the substituted judgment standard, and the best interest standard, a conservator shall invest and manage the conservatorship estate as a prudent investor. The guardian- conservator shall exercise prudence in investment, shall periodically review the incapacitated person's individual's situation and assets, and make recommendations regarding appropriate investments. In the exercise of prudence ~~†The guardian- conservator shall invest and manage the conservatorship estate as a prudent investor by considering:~~

~~409.8.1 Not allow assets to sit idle except for good reasons.~~

~~409.8.2 Consider the tax consequences of decisions.~~

~~409.8.3 Consider the incapacitated person's long term ability to sustain costs of arrangements made by the guardian.~~

~~409.8.4 Consider the incapacitated person's ability to gain the benefits of specific decisions.~~

~~409.8.5 Consider the costs incurred in managing investments, including the costs of the guardian, those specialists hired by the guardian, and the costs of the investment vehicles.~~

~~409.8.6 Consider the incapacitated person's historical investment pattern and tolerance for risk, lifestyle needs, care and medical needs, estate considerations, tax consequences, and life expectancy.~~

409.11.1 The circumstances of the individual subject to conservatorship and the conservatorship estate;

409.11.2 General economic conditions;

409.11.3 The possible effect of inflation or deflation;

409.11.4 The expected tax consequences of an investment decision or strategy;

409.11.5 The role of each investment or course of action in relation to the conservatorship estate as a whole;

409.11.6 The expected total return from income and appreciation of capital;

409.11.7 The need for liquidity, regularity of income, and preservation or appreciation of capital; and

409.11.8 The special relationship or value, if any, of specific property to the individual.

RCW 11.130.505 (5)

409.13 A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

RCW 11.130.505 (7)

409.14 In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator.

RCW 11.130.505 (9)

409.15 A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual, or any other person the conservator or the court determines.

RCW 11.130.515 (3)

409.916 A guardian and conservator shall not commingle the funds of an ~~incapacitated person~~individual with funds of the guardian and conservator or the funds of staff. A guardian and conservator may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian and conservator has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

409.10-17 The guardian and conservator shall not borrow from an ~~incapacitated person individual~~. A guardian- and conservator shall not lend funds at interest to an ~~incapacitated person\_ individual~~.

409.4418 The responsibility to protect and preserve the guardianship estate, property and finances of an individual rests with the guardian and/or conservator appointed by the court and in accordance with the authority granted by the court to the guardian or conservator respectively. When the guardian or conservator is an agency, this responsibility is that of the agency and the guardian and/or conservators identified with the Certified Professional Guardianship and Conservatorship Board as the responsible guardian and/or conservators for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian and/or conservator to provide appropriate oversight and review, in order to ~~preserve the guardianship estate~~ discharge the guardian and/or conservator's duties.

409.12-19 At the death of the ~~incapacitated person individual~~, the ~~guardian conservator~~ shall comply with RCW ~~11.88.150~~ 11.130.550 and RCW 11.130.570.

RCW 11.130.550

RCW 11.130.570

409.1320 The ~~guardian conservator~~ shall obtain insurance coverage on insurable real and personal property, and ~~insurance coverage, as appropriate and feasible, for guardianship property~~ maintain insurance on the insurable insured real and personal property, of the individual , unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds: (a) The property lacks sufficient equity; or (b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual . A guardian shall obtain and maintain insurance only to the extent the guardian has been granted authority over property of the individual, there are sufficient funds and it's in the best interests of the individual.

RCW 11.130.505 (10)



# Stakeholder Comments

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November 22, 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:

Thank you for the opportunity to comment on the proposed regulations. Here are my comments:

#### **Standard of Practice 409.20**

Reference statute for this Standard of Practice in the UGA:

RCW 11.130.505(10) A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:

- (a) The property lacks sufficient equity; or
- (b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual.

As proposed by Board with additions to the actual statute underlined:

SOP 409.20 The conservator shall obtain if necessary and maintain insurance on the insurable real and personal property of the individual, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds: (a) The property lacks sufficient equity; or (b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual. A guardian shall obtain and maintain insurance only to the extent the guardian has been granted authority over property of the individual, there are sufficient funds and it's in the best interests of the individual.

The addition of the phrase “obtain if necessary” by the Board does not add to the clarity of the proposed regulation. The statute provides a bright line rule – “maintain insurance” unless the estate lacks sufficient funds. Additionally, insurance is not required if the court finds the property lacks sufficient equity or insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual. Adding the phrase “obtain if necessary” is an extra phrase not in the law and it dilutes the bright line.

The last sentence of 409.20 requiring a guardian to obtain and maintain insurance is unnecessary. The UGA does not authorize a guardian to have authority over an individual’s property. Under RCW 11.130.330, Powers of Guardian for Adult, there is no language allowing a guardian to have authority over an individual’s property. A guardian may manage an individual’s funds, but not their property.

The Board has decided to quote the statute in the Standards of Practice. When the Board does so, it should be careful to quote the statute as written and not add to it or paraphrase it. Doing so could be very confusing—the exact opposite of the Board’s goal in adding the statute to the SOPs.

I would suggest the Board remove the underlined language and quote the statute exactly as written.

### **Standard of Practice 415**

This provides a good guideline for the length of time to retain records. The Board should remove Ethical Advisory Opinion No. 2005-004 because it is now no longer relevant given the proposed Standard of Practice 415.

### **Additional Regulation Proposal**

I would like to propose one additional regulation. I am concerned about solo CPGs being appointed under their own name and the name of the company they do business as (dba), for example: “Pat Jones dba Caring Hands LLC”.

I think there are problems with such appointments:

- They potentially mislead the public into thinking the solo CPG is a company and may have a team of people to provide services instead of just one person;
- They create confusion about who has been appointed, the solo CPG, the company, or both;
- Only certified CPG agencies are allowed to use a business name when



- appointed; and
- It is the unauthorized practice of law if the solo guardian appears in court and purports to represent their company.<sup>1</sup>

The solution for guardians who wish to have the protection of a limited liability company has existed since the Board was created—find another CPGC and become an agency. The Board should clarify that solo CPGCs may only be appointed in their name, and may not include in the order appointing or Letters of Office any other name they do business as. I would propose the following language:

Regulation XXXX: A solo Certified Professional Guardian and Conservator shall only use their individual name when appointed to act as a guardian or conservator and may not include the name of any “doing business as” entity in any documents.

Thank you for your work updating the Standards of Practice.

Very truly yours,



DEBORAH JAMESON

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<sup>1</sup> In Washington, an LLC must be represented by a lawyer because laypeople are prohibited from representing other persons or entities. *Dutch Village Mall v. Pelletti*, 162 Wn.App. 531, 256 P.3d 1251 (2011)

Excerpt from Ms. Deborah Jameson's July 2021 Comments on  
Proposed draft amendments to Regulation 409.

409.20 The UGA allows a guardian to manage an individual's money. The statute is silent on how much money an individual can have before a conservatorship is required, but discussions by the court seem to indicate the amount will be something less than \$5,000. It is unclear whether an individual would have insurable assets without a conservatorship (but hard to know).

# Withdrawal of Ethics Advisory Opinion

Ethics Advisory Opinions

**Opinion 2005-004 - Retention of Records**

**CERTIFIED PROFESSIONAL GUARDIAN BOARD**

**ETHICS ADVISORY OPINION**

**RETENTION OF RECORDS**

**OPINION # 2005-004**

**Date:** September 11, 2006

**Brief restatement of question(s) posed:**

How long should a certified professional guardian retain client records?

**Directly applicable Standards of Practice, statutes, and/or other law or standards:**

A guardian who has been discharged in a guardianship matter is expected to transfer assets and information to the successor guardian or personal representative in good order. Subsequent to discharge and transfer of assets and information, the retention of records benefits the incapacitated person and may protect the guardian against future allegations of misconduct or to explain the general management of the guardianship, such as in a probate proceeding or tax audit.

No specific standards of practice have been adopted by the Certified Professional Guardian Board to guide guardians in their decisions as to the retention of client records subsequent to their discharge as guardians. However, the premature destruction of records has the risk of complicating the management of a guardianship practice. Records which support decisions made by the guardian may be needed long after the conclusion of a guardianship and the discharge of the guardian. Consequently, retention of essential records either electronically or as paper in a secured and safe storage area for an indefinite time period is a matter to be determined, after consultation with an attorney, by the individual guardian.

## Regulations for Consideration of Approval with Effective Date January 1, 2022

- Regulations Series 000, 200, 300, 500, 600, 700
- Regulation 404

Materials will be posted Friday, December 10, 2021, after close of Public Comment Period