

# Meeting Minutes

June 13, 2022



# Certified Professional Guardianship and Conservatorship Board

Monday, June 13, 2022  
Zoom Meeting  
9:00 a.m. – 2:00 p.m.

MEETING MINUTES	
<b>Members Present</b>	<b>Members Absent</b>
Judge Diana Kiesel, Chair	Ms. Susie Starrfield
Judge Grant Blinn	
Judge Robert Lewis	<b>Staff Present</b>
Ms. Kristina Hammond	Mr. Christopher Stanley
Ms. Lisa Malpass	Ms. Stacey Johnson
Ms. Melanie Maxwell	Ms. Thai Kien
Mr. William Reeves	Mr. Samar Malik
Dr. K. Penney Sanders	Ms. Maureen Roberts
Mr. Dan Smerken	Ms. Sherri White
Ms. Amanda Witthauer	Ms. Kay King
Commissioner Ferguson-Brown <sup>1</sup>	Ms. Rhonda Scott
	Ms. Linda Vass

**Guests –** See last page

## 1. Meeting Called to Order

Judge Diana Kiesel called the June 13, 2022 Certified Professional Guardianship and Conservatorship Board meeting to order at 9:00 a.m.

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

Judge Kiesel welcomed all present.

**Motion:** A motion was made and seconded to approve the April 11, 2022 Board meeting minutes as amended. The motion passed.

**Motion:** A motion was made and seconded to approve the May 9, 2022 Board meeting minutes. The motion passed.

## 3. Chair's Report

Judge Kiesel announced that Commissioner Ferguson-Brown has been appointed as a judge. Judge Kiesel invited discussion of a proposed earlier start time for the Board's short meetings. No Board members opposed moving the regular start time for short meetings to 7:30 a.m. beginning with the July meeting. Technology issues regarding posting of meeting minutes on the website have been fixed. Judge Kiesel acknowledge the written comment submitted by Ms. Jenifer Mick. Judge Kiesel stated that she has respect for CPGCs and

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<sup>1</sup> Commissioner Ferguson-Brown joined the meeting at 10:48 a.m.

their work and hopefully this is reflected in her actions. Judge Kiesel announced that the DEI committee is working to secure a guest speaker from Aging and Disability Services in Seattle to present at the meeting in October. This presentation will be on DEI issues and CEUs will be available for CPGCs who attend.

**Motion:** A motion was made and seconded to begin the short Board meetings at 7:30 am. The motion passed.

#### **4. Presentation: Supreme Court Rule Making**

Justice Yu discussed the withdrawal of the recent modification to GR23 regarding the Open Public Meetings Act. Justice Yu stated that the Board is part of the judicial branch, and clearly not subject to the Open Public Meetings Act. However, the principles of transparency are important. Justice Yu asked the Board to draft guidelines for when the Board would be in executive session and public session. Justice Yu expressed the importance of making sure the public understands what the Board is using for a guideline. The Board has the option to propose changes as modifications to General Rule 23 or adopt as Board regulations. One advantage of going through the Supreme Court rules process is the broad outreach. The Court has no preference on which method the Board uses as long as the process is clearly outlined. The Board can present for review in August.

#### **5. Public Comment**

Ms. Christina Baldwin from Spectrum Institute presented on the delivery of mental health services to adults with developmental disabilities (DD). Thomas Coleman asked the Board to consider regulations to expand access to mental health services for adults with DD. Ms. Baldwin suggested more reports regarding the health, legal, and financial consequences when services are denied or delayed.

Judge Kiesel thanked Ms. Baldwin and Mr. Coleman for their presentation and stated that the Board could use more training on these issues.

Mr. Coleman offered to provide a speaker on the subject. Judge Kiesel offered to meet with Mr. Coleman and suggested providing additional information at the next long Board meeting.

Ms. Deborah Jameson commented that the website does not have a search function to identify former CPGCs. She stated it would be helpful if this function was implemented.

#### **6. GR 23 Open Public Meetings Act Draft Language**

Judge Kiesel noted that the Board materials contained an initial draft of suggested changes to GR 23 to incorporate transparency principles of the Open Public Meetings Act. Judge Kiesel stated that she would either convene an Ad Hoc Committee to review the initial draft or have the Regulations Committee review it. The Board will need to complete its suggestions by August.

#### **7. Grievance Report**

Staff reported four (4) grievances were received during the month of May. To date, the Board dismissed sixteen (16) grievance received in 2022 as incomplete or for no jurisdiction, twenty-four (24) grievances have been forwarded to the court and two (2) grievances has been assigned to staff for investigation. A total sixty (60) grievances are currently unresolved.

## **8. Board Consideration of Suggested Changes to Reg 708**

Mr. Smerken noted that the goal of the regulation is to ensure that the needs of individuals subject to guardianship continue to be met by the court system. The regulation provides for a process to ensure all courts are notified in a timely manner. The proposed changes acknowledge CPGC retirement or resignation and a declaration process as CPGCs wrap up their caseload and are formally discharged by the court. The court can appoint a successor guardian/conservator where needed.

## **9. Education Committee**

Judge Kiesel presented the approval of CEUs. The Education Committee approved the NGA course regarding Transgender and Gender Diverse Communities for credit. A notice was sent out to CPGCs notifying them of the course approval.

Judge Kiesel also noted that the Education Committee approved the Medicaid 101 LTCC course and two WAPG courses.

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

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

On behalf of the Applications Committee, Judge Robert Lewis presented the following applications for certification. The Application Committee abstained.

Motion: A motion was made and seconded to conditionally approve Mary Swenson's application for certification, conditioned on the completion of mandatory training, with transferable skills in social services. The motion passed.

Motion: A motion was made and seconded to deny Byron Cotton's application for certification for insufficient transferable experience. The motion passed.

On behalf of the Appeals Committee, Mr. Reeves presented the following application denial. The applications committee abstained.

Motion: A motion was made and seconded to affirm the denial of Jane Polinder's application for certification. The motion passed.

On behalf of the Standards of Practice Committee, Judge Grant Blinn presented the following grievances for Board action. Members of the Standards of Practice Committee abstained.

Motion: A motion was made and seconded to forward complete grievance 2022-043 to the Superior Court. The motion passed.

Motion: A motion was made and seconded to dismiss grievance 2022-044 for no jurisdiction. The motion passed.

Motion: A motion was made and seconded to forward complete grievance 2022-046 to the Superior Court. The motion passed.

Motion: A motion was made and seconded to forward complete grievance 2022-047 to the Superior Court. The motion passed.

Motion: A motion was made and seconded to forward complete grievance 2022-048 to the Superior Court. The motion passed.

Motion: A motion was made and seconded to dismiss grievance 2022-011 following the court's finding. The motion passed.

Motion: A motion was made and seconded to refer grievance 2022-039 back to the court for clarification on their findings/conclusions. The motion passed.

## 12. Wrap Up/Adjourn

With no other business to discuss, the June 13, 2022 CPGC Board meeting was adjourned at 12:24 p.m. The next Board meeting will take place via Zoom teleconference on Monday, July 11, 2022 beginning at 7:30 a.m.

### Recap of Motions:

MOTION SUMMARY		STATUS
Motion:	A motion was made and seconded to approve the minutes of the April 11, 2022 Board meeting as amended.	Passed
Motion:	A motion was made and seconded to conditionally approve Mary Swenson's application for certification, conditioned on the completion of mandatory training, with transferable skills in social services.	Passed
Motion:	A motion was made and seconded to deny Byron Cotton's application for certification for insufficient transferable experience.	Passed
Motion:	A motion was made and seconded to affirm the denial of Jane Polinder's application for certification.	Passed
Motion:	A motion was made and seconded to forward complete grievance 2022-043 to the Superior Court.	Passed
Motion:	A motion was made and seconded to dismiss grievance 2022-044 for no jurisdiction.	Passed
Motion:	A motion was made and seconded to forward complete grievance 2022-046 to the Superior Court.	Passed
Motion:	A motion was made and seconded to forward complete grievance 2022-047 to the Superior Court.	Passed
Motion:	A motion was made and seconded to forward complete grievance 2022-048 to the Superior Court.	Passed
Motion:	A motion was made and seconded to dismiss grievance 2022-011 following the court's finding.	Passed
Motion:	A motion was made and seconded to refer grievance 2022-039 back to the court for clarification on their findings/conclusions.	Passed

**Guests:**

Justice Yu  
Samantha Hellwig, AAG  
Angela Carlson-Whitley  
Glenda Voller  
Cliff Messerschmidt  
Cheryl Mitchell  
Chris Neil  
Mark Vohr  
Brenda Morales  
Alexis Carter  
Elizabeth Gilpin  
Mary Shobe  
Karen Klem

Deborah Jameson  
Rick Black  
Thomas Coleman  
Maria Emerson  
Sarah Tremblay  
Scott Malavotte  
Biza Stenfert Kroese  
Karen Newland  
Kecia  
Emmi Deckard  
Kathy Balsam  
206-200-4924  
Puget Sound Guardians

DRAFT

# Grievance Report

June 30, 2022

**Certified Professional Guardians and Conservators  
Grievance Status  
June 30, 2022**

<b>New Grievances Received in June, 2022:</b>	<b>7</b>
<b>2022 Grievances Dismissed<sup>1</sup> by Board on June 13, 2022:</b>	<b>1</b>
<b>2022 Grievances Forwarded to Superior Court on June 13, 2022:</b>	<b>4</b>
<b>2022 Grievances Forwarded to CRC on June 13, 2022:</b>	<b>1</b>
<b>2022 Grievances Assigned for Investigation on June 13, 2022:</b>	<b>0</b>

<b>Total 2022 Grievances Received:</b>	<b>52</b>
<b>Total 2022 Grievances Dismissed<sup>2</sup>:</b>	<b>17</b>
<b>Total 2022 Grievances Forwarded to Superior Court:</b>	<b>28</b>
<b>Total 2022 Grievances Assigned for Investigation</b>	<b>2</b>

**2022 Grievances Resolved by Board<sup>3</sup>:**

<b>Dismissal following Court Order</b>	<b>3</b>
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**Active CPGCs: 257**

<sup>1</sup> Dismissed as Incomplete or for having No Jurisdiction

<sup>2</sup> Dismissed as Incomplete or for having No Jurisdiction

<sup>3</sup> Resolution following Investigation or Court Order



<b>Pre-2022 Grievance Status – June, 2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>Total</b>
Grievances Resolved this Month:	1			1			2
Grievances Remaining Requiring Investigation*:	26	4	2	0	0	0	32

<b>Pre-2022 Grievances Pending*</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>Total</b>
Voluntary Surrender/Litigation:							
Conflicts Review Committee:							
ARD:		1	2				3
Forward to Court:		2				1	3
Complaint/Hearing:							
Administrative Decertification:							
Total <b>Pending</b> :		3	2			1	6

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

<b>Resolution of Pre-2022 Grievances – June 2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>Total</b>
Dismissal – No Jurisdiction							
Dismissal – No Actionable Conduct	1			1			2
Dismissal - Administrative							
Dismissal – Insufficient Grievance							
Mediated – Dismissed							
Advisory Letter 507.1							
ARD - Admonishment							
ARD - Reprimand							
ARD - Suspension							
Terminated – Voluntary Surrender							
Terminated – Administrative Decertification							
Terminated – Decertification							
TOTAL PRE-2022 GRIEVANCES RESOLVED IN JUNE 2022	1			1			2

	<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 by Year</b>	<b>95</b>	<b>80</b>	<b>77</b>	<b>85</b>	<b>104</b>	<b>104</b>	<b>545</b>
Dismissal – No Jurisdiction	9	21	15	22	30	20	117
Dismissal – No Actionable Conduct	48	41	39	52	60	55	295
Dismissal - Miscellaneous		1					1
Dismissal – Insufficient Grievance	7	6	5	3	1	2	24
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	4	1	3	1	1	3	13
Termination – Voluntary Surrender			1	2	8	15	26
Termination – Decertification			5	1	1		7
<b>Total Pre-2022 Grievances Resolved:</b>	<b>68</b>	<b>73</b>	<b>73</b>	<b>85</b>	<b>104</b>	<b>103</b>	<b>506</b>

Guardians/Agencies with Multiple Grievances  
**June 2022**

ID	Year Cert.	Unresolved Grievances	Year(s) Grievances Received
A	2015	3	2021 (1), 2022 (2)
B	2012	3	2022 (3)
C	2009	3	2021 (3)
D	2001	2	2016 (1), 2022 (1)
E	2016	11	2021 (5), 2022 (6)
F	2014	3	2019 (1), 2021 (2)
G	2014	2	2022 (2)
H	2011	3	2021 (3)
I	2007	4	2019 (2), 2020 (1), 2021 (1)
J	2002	2	2021 (2)
K	2001	5	2019 (1), 2020 (4)
L	2011	2	2021 (1), 2022 (1)
M	2001	4	2022 (4)
N	2006	3	2021 (2), 2022 (1)
O	2011	4	2022 (4)
		54	

Of the 68 currently unresolved grievances, 54 involve 15 Certified Professional Guardians and Conservators or Agencies with 2 or more grievances.

# Education Committee

# Education Committee

## 1. Emerging Issues Topics for 2023/2024 CEU Reporting Period

- Uniform Guardianship Act
- Mental Health
- Sexuality and Gender
- Covid-19

## 2. NGA Course Approval for CEU:

- Addressing the Needs of Transgender Diverse Communities  
Emerging Issues – 1 Credit
- Working with Challenging Families  
Emerging Issues – 1 Credit

Public Comments  
Spectrum Institute



**Disability and Abuse Project**  
**Disability and Guardianship Project**

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June 1, 2022

Honorable Steven C. González  
Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Adoption of ADA-Compliant Mental Health Access Standards by  
the Certified Professional Guardianship and Conservatorship Board

Dear Chief Justice González:

We are sending this [letter](#) and attachments to you and the CPGC Board in advance of our presentation at the Board's meeting on June 13, 2022. As we address the relevance of our recently released [Consequences Report](#) to the mental health needs of adults who are living under an order of guardianship, we will be emphasizing the application of the Americans with Disabilities Act.

These materials should help the Board, under the supervision of the Supreme Court, develop standards of practice which protect the [rights](#) of protected persons and comply with [standards](#) adopted by the National Guardianship Association. They should also assist local courts and fiduciaries to meet their [obligations](#) under Title II of the Americans with Disabilities Act.

We have advised the Supreme Court [several times](#) regarding the application of the ADA to guardianship proceedings. We submitted a formal [ADA complaint](#) which was received but never acted on to our knowledge. With this letter, we are getting more specific by emphasizing that the ADA entitles protected persons to have effective communication and meaningful participation in ongoing guardianship proceedings, including prompt and equal access to mental health services when they are needed. Because guardians are "gatekeepers" to such services for individuals under their care, it is essential that the Board, under supervision of the Supreme Court, have a mechanism in place that maximizes access to mental health services for this vulnerable population. That requires specific standards of practice on this topic, proper training, and effective monitoring mechanisms.

We hope these materials and our upcoming presentation will help the Board fulfill its [duties](#) by taking appropriate steps to adopt ADA-complaint standards, training, and monitoring mechanisms to ensure prompt and equal access to mental health services for protected persons when they need it.

Respectfully submitted:

Thomas F. Coleman  
Legal Director  
[tomcoleman@spectruminstitute.org](mailto:tomcoleman@spectruminstitute.org)

Christina Baldwin  
Mental Health Project Director  
[christina.baldwin@spectruminstitute.org](mailto:christina.baldwin@spectruminstitute.org)

cc: CPGC Board Members

Attachments are accessible through links in the pdf version of this letter which is available online at:  
<https://disabilityandguardianship.org/2022-washington-chief-justice-letter.pdf>

*State of Washington*  
**Certified Professional Guardianship  
and Conservatorship Board**

Presentation by  
Christina Ann Baldwin  
June 13, 2022

Good morning everyone. My name is Tina Baldwin. I am the director of The Mental Health Project of Spectrum Institute.

I truly appreciate the opportunity to speak to you today. Thank you.

There are two other people here that I would like to introduce. Tom Coleman is here to speak after me. He is the executive director and legal director of Spectrum Institute and legal director of the Mental Health Project.

Emmi Deckard, who is the author of the report I am about to comment on, is also here and said she is willing to answer questions in the Q & A session following Tom's presentation.

It is Spectrum Institute's intention to stimulate the adoption and implementation of long overdue improvements in the delivery of mental health services to adults with developmental disabilities.

To this end, Spectrum Institute published a report in May written by Emmi titled *Consequences of Delayed or Denied Mental Health Care for Individuals with Developmental Disabilities*. It not only looks at the origins and frequency of delayed or denied mental health services to adults with developmental disabilities but also highlights the complexity of the situation and the significant adverse consequences that can impact an individual's overall well-being and quality of life.

This is a vulnerable population in which there is a greater prevalence of mental illness and behavior difficulties than in the general population.

Although psychological disorders commonly occur alongside developmental disabilities, these disorders are chronically underdiagnosed, misdiagnosed, or poorly managed. Emmi writes in the report and I quote "Diagnostic overshadowing, in which symptoms of mental or physical illness are misinterpreted as symptoms of one's IDD, is a likely contributor to suboptimal care which results in less likely diagnoses of psychiatric disorders in this group despite higher occurrence."

"She goes on to say that "Individuals with developmental disabilities are less likely to have developed coping skills and, as a result of potentially limited verbal skills, may resort to physical aggression in order to express their discomfort or stress. Alternatively, physical aggression could be rooted in a mental illness or be an expression of pain resulting from a medical issue.

"There are numerous explanations for this single behavior; however, clinicians are quick to assume the behavior is attributed to the developmental disability rather than exploring alternate causes as would be done for individuals without developmental disabilities. Hence, the diagnosis of an developmental disability can overshadow any other diagnosis. If clinicians don't maintain a high index of suspicion for alternate causes of their behavior, people with developmental disabilities or mental health disorders can be denied appropriate screenings, treatments, and investigations necessary for making alternate diagnoses."

I repeat "Clinicians are quick to assume the behavior is attributed to the developmental disability." Obviously, this assumes that the individual has gotten into see a clinician in the first place.

So, then we have to ask whose responsibility is it to see that an individual with developmental disabilities receives accurate evaluations for causes beyond the development disability.

Whose responsibility is it to see that the individual receives access to the same therapy options available to people in the general population and to see that they are appropriately received in a timely manner.

What if the responsible person says they don't have the time to deal with any of it?

Or what if they say "there is no one within 10 miles so we are just going to let go of it" when, in fact, there is somebody who can do it by Zoom regardless of distance?

**Should these rationales exempt CPGCs from the responsibility to ensure prompt and appropriate care for an individual who must depend on them for such care?**

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I'm excited to have you read the report to learn more about

- \* the myriad adverse consequences of denial or delay of mental health services,
- \* how they impact the life of an individual with a developmental disability
- \* and, how pervasive, insidious, and complicated they are.

We are asking you, the Certified Professional Guardianship and Conservatorship Board to review your existing policies and procedures in order to



- \* improve access and delivery to mental health services especially considering the adverse consequences to the individual when that access is delayed or denied and
- \* to help CPGCs comply with the Americans with Disabilities Act and other state and federal laws.

In addition to *Consequences of Delayed or Denied Mental Health Care for Individuals with Developmental Disabilities*, we believe there should be three more reports that address the following:

1. the consequences to an individual's family and others in their network of support when mental health services are denied or delayed.
2. the potential legal consequences that willful or negligent delay or denial for such services can have for those who are gatekeepers, for example, primary care physicians, professional or lay guardians, and court-appointed attorneys in guardianship.
3. the potential financial consequences that the deprivation or delay of mental health therapy places on state and local resources, for example, entitlement programs, law enforcement services, and judicial proceedings.

We believe the CPGC Board is a key player in Washington in efforts to improve the delivery and access of mental health services to adults with developmental disabilities and, therefore, we truly look forward to continuing this conversation with you.

Thank you.



*Christina Ann Baldwin in the Director of the Mental Health Project of Spectrum Institute and the Chairperson of the Board of Trustees.*

*The purpose of the Mental Health Project of Spectrum Institute is to promote improved access to a full range of mental health therapies for adults with intellectual and developmental disabilities. The project focuses on the role of guardians, conservators, and others who have assumed primary caregiving responsibilities for this special needs population. These individuals are mental health therapy fiduciaries. The mission of the project is to educate these fiduciaries about their duty to take the necessary steps to implement the right of adults with intellectual and developmental disabilities to have prompt access to the necessary and appropriate mental health therapies they need. The mission also includes the education of self-advocates and family advocates on the right to mental health therapy and how to ensure that court-appointed agents and those who have assumed caregiving responsibilities fulfill their fiduciary duties. The project accomplishes its mission through research, education, and advocacy. In addition to working with advocates and mental health fiduciaries, it also reaches out to primary care physicians who are often the gatekeepers to mental health services, and to psychologists, psychiatrists, social workers, and other licensed mental health professionals.*

Christina may be contacted at [christina.ann.baldwin@gmail.com](mailto:christina.ann.baldwin@gmail.com).

*State of Washington*  
**Certified Professional Guardianship  
and Conservatorship Board**

Presentation by  
Thomas F. Coleman

As you heard from Tina Baldwin, director of the Mental Health Project of Spectrum Institute, the delay or denial of mental health services to adults with developmental disabilities can have serious negative consequences. Many of those consequences were identified in a report we sent to this board. In doing so, we wanted to underscore that adults under a guardian's care are harmed when they do not receive necessary mental health therapy in an appropriate and timely manner.

The report uses the term "gatekeepers" to describe the people who decide whether and when adults with developmental disabilities will receive mental health services. Because adults with developmental disabilities who are living under an order of guardianship have lost the right to make their own medical decisions, they are totally dependent on their guardians to arrange for mental health care for them. Their guardians are the "gatekeepers" to these services. The gate remains locked, and mental health therapy is unavailable, unless a guardian decides otherwise.

This part of our presentation focuses on legal issues that guardians should consider in connection with their role as a protector. They should be aware of issues that are implicated if they delay or deny mental health care to a protected person.

To guide the board through these issues, I will be referring to the June 1 letter and the attachments that were sent to board members and the Supreme Court by Spectrum Institute. The attachments were hyperlinked so the reader could access them online.

The first attachment was the [Consequences Report](#). As Tina Baldwin mentioned, we encourage the board to use the report as it adopts rules to ensure that guardians secure timely and appropriate mental health services for protected persons.

➡ In the letter, we recommended that the board develop standards of practice which safeguard the [rights](#) of protected persons. The word rights is hyperlinked to a declaration of Legal Principles that are associated with the right of protected persons to prompt and appropriate mental health services when they are needed. That document cites federal and state constitutional and statutory provisions as well as relevant case law. These are key points from the declaration of Legal Principles:

- The constitutional right to make medical decisions is infringed when a judge transfers medical decision-making authority from an adult to a guardian. As a result, due process requires the court, through the guardian, to exercise medical decision-making in a responsible manner.
- Adults with developmental disabilities have the right to equal access to health care services. (Wash. Rev. Statutes [71A-10.030](#) declares that “The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.”) I am unaware of any law that permits deficient medical services for this vulnerable population. As the “gatekeeper” to such services, a guardian must be pro-active in knowing when mental health care is needed and take steps to secure it promptly. Delay can have serious negative consequences to a protected person.
- Failure to secure prompt and appropriate mental health care may constitute “dependent adult neglect” and trigger an investigation by adult protective services. (Wash. Rev. Statutes [74.34.020\(16\)](#) defines “neglect” as a pattern of inaction by a person with a duty of care that fails to provide services to maintain the mental health of a vulnerable adult.
- The Americans with Disabilities Act (and [RCW 49.60.030](#)) may be violated if a guardian negligently deprives a protected person of prompt and appropriate mental health services. It is the duty of the State of Washington, as part of an ongoing judicial proceeding, to ensure meaningful access to the services that are provided or coordinated by a guardian. As gatekeepers to mental health services, both courts and court-appointed guardians have duties under Title II of the ADA.

➡ In the letter, we asked the board to develop rules of practice that conform to the standards that have been adopted by the National Guardianship Association.

- [NGA Standard 14](#) - **Decision-Making About Medical Treatment:**

Requires that a guardian be **pro-active**. “[T]he guardian shall . . . **monitor** . . . the health and well-being of the person under guardianship.”

Requires that a guardian act **competently**. “[T]he guardian shall ensure that all medical care for the person is **appropriately** provided . . .”

➡ The letter emphasized that guardians, and the courts that appoint them, should meet their [obligations](#) under Title II of the ADA. Although the United States Department of Justice has not yet issued an ADA guidance memo for guardianship courts and guardians, such guidance can be gleaned from a criminal justice system memo. Just change the words “criminal justice system” with “adult guardianship system” and you have examples of what judges and guardians should be doing to ensure compliance with the ADA. A specific guidance memo from the DOJ on adult guardianship proceedings may be issued in the near future in response to a congressional mandate. We will alert you when we learn of a release date.

**(Please Note:** Duties under the ADA are triggered when a disability is [known or obvious](#). A request is not required. All persons who are under an order of guardianship are protected by the ADA since their disabilities have been adjudicated and they are therefore “known.” Because General Rule 33 and information on the Washington Courts website suggest that requests are required for ADA rights and duties to be triggered, the rule and those materials are misleading and therefore out of compliance with federal law. This should be addressed by the judicial branch.)

➡ Finally, our letter called attention to the board’s mandate under [General Rule 23](#) to adopt and implement policies or regulations setting forth minimum standards of practice for professional guardians. We trust that the Consequences Report, this presentation, and the reference materials we have provided to the board will assist the board, and the Supreme Court to which the board is responsible, in providing guidance to assist guardians in securing prompt and appropriate mental health services for protected persons, and a grievance procedure for noncompliance.

In the future, we are willing to assist the board as it addresses these issues more thoroughly. Please let us know how we may help. We are now open to any questions.



*Thomas F. Coleman is the legal and executive director of Spectrum Institute – a nonprofit organization conducting research, education, and advocacy to improve the administration of justice and secure equal rights for vulnerable populations, including adults with developmental disabilities. He may be contacted by email at: [tomcoleman@spectruminstitute.org](mailto:tomcoleman@spectruminstitute.org)*

<https://disabilityandguardianship.org/guardianship-board-presentation-2.pdf>

**GR 33**  
**“Requests for Accommodations**  
**by Persons with Disabilities” \***

\* [General Rule 33](#) of Washington State Court Rules and ADA Guidelines found on the Washington Courts [website](#) are premised on an assumption that an accommodation request must be made in order to trigger the ADA duties of courts and court-appointed agents.

These materials are silent on the duties of courts, and the rights of court users with disabilities, when no request is made but the nature and severity of a disability and its effect on meaningful participation in a court service is known or obvious. In this respect, the judicial branch is mistakenly giving the impression that judges and court-appointed agents only have duties when requests are made and that protected persons in guardianships only have ADA rights when a request is made. As shown by references in the right column, federal law says otherwise.



Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)

A public entity must offer accommodations for *known* physical or mental limitations. (Title II Technical Assistance Manual of DOJ)

Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs a modification. (DOJ Guidance Memo to Criminal Justice Agencies, January 2017)

Some people with disabilities are not able to make an ADA accommodation request. A public entity’s duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. (*Updike v. Multnomah County* (9<sup>th</sup> Cir 2017) 870 F.3d 939)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

A request for accommodation is not necessary if a public entity has knowledge that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are obvious. (*Robertson v. Las Animas* (10<sup>th</sup> Cir. 2007) 500 F.3d 1185)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had knowledge of an individual’s disability and needs but took no action. (*A.G. v. Paradise Valley* (9<sup>th</sup> Cir. 2016) 815 F.3d 1195)

The import of the ADA is that a covered entity should provide an accommodation for *known* disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2<sup>nd</sup> Cir. 2008) 531 F.3d 127)