

**Certified Professional Guardian Board**  
**Meeting Minutes**  
**January 10, 2011**  
**SeaTac Office Center, 18000 International Blvd., SeaTac, WA**

**CHAIR**

Judge Chris Wickham

**MEMBERS PRESENT**

Gary Beagle  
Dr. Barbara Cochrane  
Nancy Dapper  
William Jaback  
Judge James Lawler  
Chris Neil  
Judge Kimberley Prochnau  
Prof. Winsor Schmidt  
Carol Sloan  
Judge Robert Swisher  
Comm. Joseph Valente

**MEMBERS ABSENT**

Robin Balsam  
Emily Rogers

**VISITORS**

Shirley Bondon, Tom Goldsmith, Karla Edwards, Brenda Morales, Carol Converse, Claudia Donnelly, Michele Penberthy, Sylvia Curry, Ken Curry

**STAFF**

Deborah Jameson

**CALL TO ORDER**

Judge Wickham called the meeting to order and asked the Board members and attending guests to introduce themselves. The Chair called for a moment of silence for the people in Arizona who were shot at a political meeting.

**BOARD BUSINESS**

**1. Approval of Minutes**

A motion was made and seconded to approve the minutes as presented for the Board meeting held on November 8, 2010. The motion passed.<sup>1</sup>

**2. Chair Report**

Judge Wickham welcomed the two new Board members, Dr. Barbara Cochrane and Carol Sloan.

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<sup>1</sup> Except in the event of a tie vote, the Chair does not vote on any motions before the Board.

Judge Wickham reported that:

- a. The BJA voted to exempt the CPG Board from General Rule 31 regarding public records.
- b. Chief Justice Madsen met with some of the Board members to discuss the findings of the Assessment Work Group, which was formed to make sure that gender, racial, and other biases were addressed across all of the Supreme Court Boards, Commissions, Taskforces, etc. Part of the discussion was how best to coordinate work and ensure that the work of the Minority and Justice and Gender and Justice Commissions be integrated into all of the other Boards, Commissions, Taskforces, etc. There is a need for the CPG Board to focus on issues of cultural competence, the racial and ethnic diversity of those who serve as guardians and those with whom the guardian comes into contact. The Board could partner with Minority and Justice or Gender and Justice and use their work on these issues to inform the Board. Judge Wickham asked for volunteers to serve on a committee to decide how to proceed.
- c. New continuing education regulations became effective on January 1, 2011.

### **3. Office of Public Guardianship.**

Shirley Bondon reported that the OPG submitted a budget proposal to the legislature. The OPG currently has nine guardians in seven counties and has two more guardians in training who will serve two additional counties if funding is available. OPG has approval to serve 100 cases and currently has 70 cases.

As part of a study required by the Legislature, WSIPP will conduct a survey to determine the need for substitute decision-makers. They will survey hospitals, nursing homes, adult family homes, residential facilities and service providers, etc.

The ABA Commission on Aging and the Attorney General of Maryland developed a document regarding making medical decisions that will be adapted for Washington.

OPG coordinated an Advocacy Training for its guardians and other CPGs. The training was about advocacy for those with developmental disabilities and focused on awareness of the capabilities of clients with developmental disabilities. There is a plan to have further trainings that are coordinated by the AOC Guardian Program.

### **4. CPG Practice Experience**

Michele Penberthy of Senior Guardianship Services reported about a case in which her agency became the guardian for an elderly man. He was living in his car and the guardian was able to find him a place in assisted living. He had a boat and some vehicles that he could no longer use safely and the guardian was able to sell those. The guardian reported that the man was happy in his new setting. She noted that being a guardian is a lot of work and is a 24 hour per day, 365 days per year job.

### **5. Education Committee.**

- a. Gary Beagle reported that the Committee is recommending a new form to track attendance at continuing education classes that is similar to a form used by the Bar

Association. CPGs would be responsible for filling out the form and sending it in if they attended less than a full day. Sponsors would not need to have sign out sheets.

b. The contract between the UWEO program and AOC has been signed.

## **6. Application Committee.**

Regulation 111.3 has been posted for comment and none were received. Motion made and seconded to pass regulation as written below. Motion passed.

### 111.3 Initial Certification Fee

111.3.1 The initial certification fee for both individuals and agencies is due sixty (60) days after notice of the application's approval by the Board for certification.

**7. Ethics Advisory Committee.** The Committee met and addressed the question posed regarding how to balance an incapacitated person's right to appear at all hearings vs. the guardian's duty to not spend money needlessly in light of the ability to mail in orders on non-contested matters. The Committee determined that this was not an ethical issue and was covered by the Standards of Practice and state statutes.

A motion was made to accept the recommendation of the committee and not create an opinion. The Board discussed the fact that under the Standards of Practice a guardian has a duty to give notice of all hearings and serve copies of all pleadings on an incapacitated person unless the court has decided otherwise and that a guardian has a duty to competently manage the incapacitated person's estate. The motion passed.

A motion was made and seconded to direct that a letter be sent to the ethics opinion requestor that referenced the Standard of Practice about notice. The motion passed.

## **8. Regulations Committee**

a. The Chair of the Committee reported that E&O regulation 117 has been posted for comment and one comment was received. The change to the regulation was designed to address the situation when a guardian files his/her E&O declaration late. The motion was made and seconded to pass the regulation as follows:

### **117 Insurance**

#### 117.5 Annual Report

117.5.1 By August 1 each year, every guardian and every agency shall file with the Board a declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.

## 117.7 Failure to Comply

- 117.7.1 Failure to comply with this regulation in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.
- 117.7.2 Failure to submit the required declaration by August 1 will subject the guardian and/or agency to a special service fee of \$50.00 if paid before September 1.
- 117.7.3 Failure to submit the required declaration by September 1 will subject the guardian and/or agency to a special service fee of \$100.00 if paid before October 1.
- 117.7.4 Failure to pay the required annual certification fee and late fee and submit the required declaration by October 1 shall subject the CPG and/or Agency to revocation of certification by the Board.
- 117.7.5 In the event of a guardian's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPG or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. The petition must set forth facts either explaining how the guardian or agency has complied with this regulation or, if the guardian or agency acknowledges that there has not been compliance with the regulation, then the facts in support of why the Board should not take disciplinary action against the guardian or agency. The petition must be signed under penalty of perjury by the guardian. The guardian or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.
- 117.7.6 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency.

117.7.7 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPG or Agency. Any such order shall be final

Discussion: There was some discussion about whether there should be lesser sanctions than decertification, but the Board noted that the issue was a failure to file a declaration, not an issue of whether insurance was necessary.

Motion passed.

- b. Regulation 108 regarding CPG names has been posted for comment and many comments were received. The regulations committee revised the regulation taking into consideration the comments. Motion made and seconded to pass regulation 108 as follows:

### **108 Certification by the Supreme Court**

108.1 The Board shall submit the names of those persons and agencies that have successfully completed the requirements and are recommended for approval as a CPG or Certified Professional Guardian Agency to the Supreme Court. Certification shall be effective upon order of the Supreme Court.

108.2 A certified professional guardian who is certified as an individual shall be appointed and carry E & O Insurance in the name in which he or she was certified. A CPG may include a business name in contact information and promotional materials provided that the individual CPG's name is listed.

108.2.1 If an individual certified professional guardian is appointed as guardian, the certified professional guardian shall assure that letters of guardianship are issued to the certified professional guardian individually. If a certified professional guardian agency is appointed as guardian, the agency shall assure that letters of guardianship are issued to the certified professional guardian agency.

108.2.2 A certified professional guardian shall not make a false or misleading communication about the guardian or the guardian's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, omits a fact necessary to make the communication considered as a whole not materially misleading.

Each certified professional guardian must come into compliance with regulation 108.2 by January 1, 2012.<sup>2</sup>

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<sup>2</sup> Within the proposed regulation amendment, additions are indicated by underlining and deletions indicated by strikethroughs.

Discussion: The Board discussed the comments received about this regulation change. The Board proposed further amendments to the regulation and voted to adopt the regulation as follows:

### **108 Certification by the Supreme Court**

108.1 The Board shall submit the names of those persons and agencies that have successfully completed the requirements and are recommended for approval as a CPG or Certified Professional Guardian Agency to the Supreme Court. Certification shall be effective upon order of the Supreme Court.

108.2 A certified professional guardian or certified professional guardian agency shall be appointed and carry E & O Insurance in the name as certified. A CPG or CPG Agency may include a business name in contact information and promotional materials concerning the provision of guardianship services provided that the name of the CPG or CPG agency is listed.

108.2.1 If an individual certified professional guardian is appointed as guardian, the certified professional guardian shall assure that letters of guardianship are issued to the certified professional guardian individually. If a certified professional guardian agency is appointed as guardian, the agency shall assure that letters of guardianship are issued to the certified professional guardian agency.

108.2.2 A certified professional guardian or certified professional guardian agency shall not make a false or misleading communication about the guardian or the guardian's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, omits a fact necessary to make the communication considered as a whole not materially misleading.

Each certified professional guardian or certified professional guardian agency must come into compliance with regulation 108.2 by January 1, 2012.

Motion passed.

- c. Standards of Practice Revisions: There was a motion made and seconded to adopt SOP 411 and 412 as follows:

### **411 Changes of Circumstances/Limitation/Termination**

411.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

411.2 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.

411.3 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.

411.4 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.

411.5 If the guardianship is a limited guardianship, the guardian shall report to the court when there are circumstances in which the incapacitated person appears to require assistance which exceeds the authority of the guardian.

411.6 If the guardianship is of the person only, the guardian shall report to the court when protection of the incapacitated person's estate may be necessary.

411.7 If the guardianship is of the estate only, the guardian shall report to the court when protection of the person may be necessary.

#### **412 Sale or Purchase of Guardianship Practice**

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

Discussion: The question was raised about voting on SOP by number, given that the numbering could change. The Board decided that the numbering of the regulations will be changed if necessary.

The motion passed.

The Board then engaged in a general discussion about how to proceed with the remaining regulations. There was some concern that the Regulations Committee had not met to discuss the comments received on the revisions to the Standards of Practice. There was a discussion about creating a task force. The decision was to proceed to address the regulations one by one with the full Board.

#### **9. Executive Session**

The Board adjourned to executive session to consider applications and a dues issue.

#### **10. Open Session**

The Board reconvened in open session and took the following actions:

##### **a. Action on Dues Matters**

A motion was made and seconded to adopt the Application Committee recommendation that Susan Whitcomb, CPG #10974, be decertified for failure to pay annual dues. The motion passed.

**b. Action on Applications:**

(1) Terry Nile, CPG #11376—Motion made and seconded to adopt the recommendation of the Applications Committee and deny the application. Motion passed.

(2) James James, CPG #11381—Motion made and seconded to adopt the recommendation of the Applications Committee and deny the application. Motion passed.

(3) Teresa Maib, CPG #11382—Motion made and seconded to adopt the recommendation of the Applications Committee and conditionally approve<sup>3</sup>. Motion passed.

(4) Tami Lauteren, CPG #11312—Motion made and seconded to reconsider her conditional approval. Motion passed. Motion made and seconded to deny her application. Motion passed.

(5) Crossroads Guardianship Services, CPGA #11373—Motion made and seconded to adopt the recommendation of the Applications Committee and approve. Motion passed.

(6) Marshan Raub, CPG #10524—Motion made and seconded to approve the request for inactive status. Motion passed.

(7) Heather Dretsch, CPG #10835—Motion made and seconded to approve the request for voluntarily surrender of certification. Motion passed.

**11. Regulations Committee cont'd:** At the Board's Long-Term Planning Meeting last April, the decision was that the Standards of Practice should be minimal standards, not best practices and that they should be bright line standards with an "escape clause" based on the particular nature of the case. It was noted that the proposed Standards of Practice raise the standard in some areas and that some guardians will not be able to meet those standards. One suggestion was to adopt language from the National Guardian Association (NGA) preamble to its Standards of Practice regarding the use of language, such as "shall", "should", "may". Staff was directed to contact the NGA regarding permission to use language from the preamble.

It was moved and seconded to adopt the 400 General Regulations as follows:

**400 General**

The following standards apply to all Certified Professional Guardians and Certified Professional Guardian agencies. These standards apply only to the

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<sup>3</sup> Conditional approval is granted pending successful completion of the mandatory training and absent any intervening disqualifying events.

degree that the court has granted a guardian the authority contemplated in a given standard.

Whenever the term “guardian” is used in these Standards, it is meant to refer to a certified professional guardian or to a certified professional guardian agency.

Whenever the term “court” is used in these Standards, it is meant to refer to the Superior Court which has authority over the guardianship in which the guardian has been appointed.

Whenever the term “incapacitated person” (IP) is used, it is meant to refer to the incapacitated person for whom the guardian has been appointed under RCW 11.88.

Whenever the term “notice parties” is used, it is meant to refer to those people who have requested special notice of proceedings under RCW 11.92.150.

A guardian is a fiduciary. A fiduciary has the duty to act primarily for another's benefit. The Guardian shall carry out his or her duties carefully and honestly. The Guardian shall act selflessly and with undivided loyalty to the incapacitated person.

A guardian cannot delegate his or her decision-making authority to another person or agency. This does not preclude employing others to carry out the guardian's decision.

Discussion: The issue of whether to quote the statute was discussed since when a statute was changed, the regulations would have to be updated. The Board decided that in this section, the statutory references were helpful.

There was a motion made and seconded to amend SOP 400 to add paragraph 5 of the preamble from the NGA Standards of Practice, subject to NGA approval.

NGA Preamble, Paragraph 5: To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." The guidelines that appear in some standards are suggested ways of carrying out those standards.

The motion to approve Regulation 400 and add the NGA preamble language passed unanimously and permission from the NGA will be sought.

A motion was made and seconded to approve Regulation 401 as follows:

**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.~~

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

401.2 401.4 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with these standards, the guardian shall bring the conflict to the attention of the court and seek the court's direction.

401.3 401.4 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws statutes which govern the conduct of the guardian in the management of the affairs of an incapacitated person. When a question exists between the standards and a statute, timely direction shall be sought from the court. If a guardian is aware of a court order of the court in a specific case which may lead to a conflict with these regulations, the guardian shall disclose this to the court.

401.4 401.2 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.

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.

401.6 401.17 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.

Discussion: The Board discussed the last two sentences of what had been the general preamble to section 401. There was a motion made and seconded to add the last two sentences of that section, beginning with, "The civil rights and liberties..." to section 403.1. The Motion passed.

There was a motion to amend the original motion made and seconded to remove the statutory references in section 401.5. There was a discussion about whether the references served an educational function.

The Board voted unanimously to adopt regulation 401 as follows:

## **401 Guardian's Duty to Court**

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

401.2 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with these standards, the guardian shall bring the conflict to the attention of the court and seek the court's direction.

401.3 The guardian shall at all times be thoroughly familiar with RCW 11.88, RCW 11.92, GR 23, these standards, and, any other regulations or laws which govern the conduct of the guardian in the management of the affairs of an incapacitated person.

401.4 The guardian shall seek legal advice as necessary to know how the law applies to specific decisions.

401.5 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. The financial accounting shall include information as to the sustainability of the current budget when expenditures exceed income during the reporting period.

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.

There was a motion made and seconded to adopt regulation 402 as follows:

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

402.1 ~~401.8~~ When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.

402.2 ~~401.9~~ The guardian, where appropriate, shall ~~cooperate with and carefully~~ consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

402.3 ~~401.10~~ The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.

402.4 ~~401.11~~ The guardian shall recognize that his or her decisions are open to the scrutiny, ~~of other interested parties and, consequently, to criticism, and challenge of others.~~ Nonetheless, s Subject to orders of the court, the guardian

alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

402.5 ~~401.13~~ A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except: (a) when necessary and relevant appropriate to the needs of the incapacitated person or (b) as required by these standards or other applicable laws or when directed by the court or the CPG Board.

~~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.

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.

Discussion: There was discussion about 402.6 and whether the various professions should be listed out and whether a guardian should have to assure the qualifications of the person assisting the incapacitated person.

There was a motion made and seconded to amend the language of 402.6 to the following:

The guardian must know and acknowledge personal limits of knowledge and expertise and shall assure that qualified persons provide services to the incapacitated person.

The motion did not pass.

The Board voted unanimously to adopt regulation 402 as follows:

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

402.1 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.

402.2 The guardian, where appropriate, shall consider the views and opinions of professionals, relatives, and friends who are knowledgeable about the incapacitated person.

402.3 The guardian shall seek independent professional evaluations, assessments, and opinions when necessary to identify the incapacitated person's needs and best interests.

402.4 The guardian shall recognize that his or her decisions are open to the scrutiny, criticism, and challenge of others. Subject to orders of the court, the guardian alone is ultimately responsible for decisions made by the guardian on behalf of the incapacitated person.

402.5 A guardian shall not disclose personal or other sensitive information about the incapacitated person to third parties except: (a) when necessary and relevant to the needs of the incapacitated person or (b) as required by these standards or other applicable laws or when directed by the court or the CPG Board.

402.6 The guardian must know and acknowledge personal limits of knowledge and expertise and shall engage appropriate professionals to provide services to the incapacitated person to the extent reasonable and necessary.

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

The motion made and seconded to adopt regulation 403 as follows:

**403 Self-Determination of Incapacitated Person.**

403.1 ~~404.5~~ The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

403.2 ~~404.7~~ Whenever appropriate feasible a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the incapacitated person. The guardian shall acknowledge the residual capacity and preferences of the incapacitated person ~~to participate in or make some decisions.~~

403.3 ~~404.12~~ When appropriate possible, the guardian will defer to an incapacitated person's ~~autonomous~~ residual capacity to make decisions.

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.

403.5 ~~403.10~~ 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.

403.6 The guardian shall determine 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.

There was a motion made and seconded to adopt NGA Standard of Practice 10 as an amendment to regulation 403. Discussion: The public at large has had no opportunity to review NGA SOP 10. The language in NGA SOP 10 may be more appropriate as an educational issue rather than a Standard of Practice. The motion failed.

There was a motion made and seconded to send Regulation 403 back to the Regulations Committee to look at the NGA Standards of Practice 10.

There was a motion made and seconded to amend 403.5 and add the language "or required by law" after the phrase, "whenever appropriate". Motion passed by a vote of 7 to 4.

The vote on the motion to adopt Regulation 403 as follows passed unanimously:

#### **403 Self-Determination of Incapacitated Person.**

403.1 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 guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

403.2 Whenever appropriate a guardian shall consult with the incapacitated person, and shall treat with respect, the feelings, values, and opinions of the 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 ~~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.

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,

Judge Wickham  
Deborah Jameson

Board Approved: February 14, 2011