

**Certified Professional Guardian Board  
Meeting Minutes  
September 12, 2011  
Teleconference**

**Chair**

Judge Chris Wickham

**Members Present**

Gary Beagle  
Dr. Barbara Cochrane  
Robin Balsam  
Chris Neil  
Emily Rogers  
Prof. Winsor Schmidt  
Carol Sloan  
Comm. Joseph Valente  
Nancy Dapper  
Judge James Lawler

**Members Absent**

Judge Kimberley Prochnau  
Judge Robert Swisher  
William Jaback

**Staff**

Deborah Jameson

**Visitors**

Tom Goldsmith  
Karen Mount  
Michael Johnson

**Call to Order**

Judge Wickham called the meeting to order at 8:05 am.

**1. Approval of Minutes**

A motion was made and seconded to approve the minutes as presented for the Board meeting held on August 8, 2011. The motion passed.<sup>1</sup>

**2. Chair Report**

This is Judge Wickham's last meeting with the Board—he and Judge Prochnau are stepping down at the end of their term on September 30, 2011. Judge Wickham shared some of his thoughts about the Board's development during his tenure on the Board. He noted that Board members come from different backgrounds, but they are all working on the same issues and bring their varying perspectives to bear. He complimented the Board on its forward-looking nature and the Board's reliance on a committee structure. He has been impressed with the dedication and many hours of volunteer service by Board members.

**3. SOP Committee Report**

The Chair of the SOPC reported that the current burden of proof in Board disciplinary cases is clear and convincing evidence. A recent Supreme Court case, *Hardee v. State*, found that the preponderance of the evidence standard was appropriate in a case regarding the revocation of a home care license. The court considered three factors: 1) the private interest affected—including the education required, the length of time for the licensing process and the ability to practice without a license; 2) procedural safeguards in place and the risk of erroneous deprivation; and 3) governmental interest in protecting a vulnerable population. The SOPC is recommending changing the burden of proof from clear and convincing to preponderance of the evidence. A motion was made and seconded to change regulation 511.12 as follows:

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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.

511.12 Standard of Proof: The Board bears the burden of establishing misconduct warranting disciplinary action by clear and convincing a preponderance of the evidence in all cases.<sup>2</sup>

Discussion: Some concern was expressed about whether Board members had considered the implication of changing the standard of proof and whether a certified professional guardian was more like a physician or more like a home child care licensee. The Supreme Court decision in Hardee also overruled the Ongom case<sup>3</sup> and found that a nursing assistant's license/registration was subject to revocation upon a preponderance of the evidence. One member stated that a CPG was more like a nursing assistant than a physician in terms of education required, testing, etc. It was noted that the Board was posting the regulation for comment and that this issue needed to be considered because of the Hardee case.

The motion passed and the regulation will be posted.

#### 4. Executive Session

The Board adjourned to executive session.

#### 5. Open Session

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

- a. Motion made and seconded to file a disciplinary complaint in CPGB Nos. 2010-005-008, 2009-013. Motion passed with 7 abstentions.
- b. Motion made and seconded to file a disciplinary complaint in CPGB No. 2011-009A. Motion passed.
- c. Motion made and seconded to accept the recommendation of the Applications Committee and deny the approval of the following application for certification based on lack of experience as described in GR 23(d)(1)(iv) and (v). Motion passed.  
Gail Roemer CPG #11479
- d. Motion made and seconded for conditional approval<sup>4</sup> of the following application for certification. Motion passed.  
Kim Murillo CPG # 11531
- e. Motion made and seconded for conditional approval of the following application for certification. Motion passed with one abstention.  
Cyril Osborne CPG # 11515

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

<sup>3</sup> *Ongom v. Department of Health*, 159 Wash.2d. 132, 148 P.3d 1029 (2006).

<sup>4</sup> Conditional approval is granted pending successful completion of the mandatory training, background check, application forms, and absent any intervening disqualifying events.

- f. Motion made and seconded to accept the recommendation of the Applications Committee and deny the approval of the following application for certification based on lack of experience as described in GR 23(d)(1)(iv) and (v). Motion passed.  
Nancy Thomas CPG # 11506
- g. Motion made and seconded to accept the recommendation of the Applications Committee and deny the approval of the following application for certification based on lack of experience as described in GR 23(d)(9)(vii). Motion passed with two abstentions.  
Lola Toloba CPG # 11500
- h. Motion made and seconded for conditional approval of the following application for certification. Motion passed.  
Heather Trent CPG # 11525
- i. Motion made and seconded for conditional approval of the following application for certification. Motion passed with one abstention.  
Niki Tucker CPG # 11512
- j. Motion made and seconded to approve the recommendation of the Application Committee and allow the guardian to change her voluntary surrender of certification in January 2011 into an inactive status nunc pro tunc and to return her to active status when she has completed 12 continuing education requirements for 2010. Motion passed.  
Heather Dretsch CPG # 10835

**6. Ad Hoc Committee Report**

AOC Staff reported that a request to allow reimbursement for Board member travel and meals for an in-person meeting on November 14 has been submitted. The Ad Hoc Committee met and drafted a plan to hold a short Board meeting from 9:00-11:30, break for lunch and then hold a public forum from 12:00-3:00.

**Adjourn**

Judge Wickham noted the next meeting will be in person on October 10, 2011 at AOC Seatac. Judge Wickham adjourned the meeting at approximately 9:07 am.

Respectfully submitted,

Judge Wickham  
Deborah Jameson

Board Approved: October 10, 2011