

# Meeting Materials

## 5/13/2013

**CERTIFIED PROFESSIONAL GUARDIAN BOARD**

	)	
	)	
Sound Guardianship, LLC	)	CPGB No. 2011-007 and 2011-018
CPGA 10722	)	AGREEMENT REGARDING
and	)	DISCIPLINE AND STIPULATED
Pam Privette, CPG No. 9714,	)	FINDINGS
	)	
Respondents.	)	<i>Disciplinary Regulation 514</i>
_____	)	

The parties, Sound Guardianship, LLC, (Sound) CPGA No. 10722 and Pam Privette, (Ms. Privette) CPG No. 9714, (Respondents, collectively) and the Certified Professional Guardian Board (Board) enter into this Agreement Regarding Discipline and Stipulated Findings (Agreement) pursuant to the Board's Disciplinary Regulations for Certified Professional Guardians. Respondents have committed violations of the Standards of Practice for Certified Professional Guardians, resulting in this disciplinary proceeding before the Board. This Agreement is a resolution of this disciplinary proceeding and shall become effective after all parties have signed the Agreement. The Agreement will be a part of the professional guardian records of Sound and Ms. Privette and will be a public record and subject to public access.

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Agreement Regarding Discipline  
(CPGB 2011-007 and 018)  
Page 1 of 14

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Pursuant to General Rule 23 (GR 23) and the Disciplinary Regulations for Certified Professional Guardians, the Certified Professional Guardian Board ("Board") alleges violations of the Disciplinary Regulations (DR) by Sound Guardianship, LLC and Pam Privette ("Respondents").

**1. JURISDICTION**

**1.1** At all times relevant herein, Ms. Privette was a certified professional guardian (CPG) pursuant to General Rule (GR) 23, CPG No.9714. Ms. Privette was certified in August 2001. Ms. Privette is president of Sound Guardianship, LLC.

**1.2** At all times relevant herein, Sound Guardianship, LLC was a certified professional guardian agency (CPGA) pursuant to GR 23, CPGA No.10722. Sound was certified in August 2007. At the time of the incident in question, Ms. Privette had final decision-making authority for incapacitated persons on behalf of Sound Guardianship, LLC.

**1.3** The Board is responsible for reviewing any allegation that a certified professional guardian or certified professional guardianship agency has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. Pursuant to its Disciplinary Regulations, the Board may impose discipline, sanctions, costs and other remedies upon a finding of violation, or may recommend that the Washington Supreme Court impose discipline, sanctions and costs, when the recommendation is for suspension or decertification of the certified professional guardian or agency.

## 2. BACKGROUND FACTS

### Guardianship of GS, Pierce County Superior Court Case No. 09-4-01399-6

2.1 On or about March 4, 2011, the Board opened a grievance under Certified Professional Guardian Board (CPGB) Number (No.) 2011-007, based on allegations that Respondents did not assume responsibility for GS's financial affairs in a timely manner and improperly restricted visits between the IP and all family and friends for approximately six weeks.

2.2 Due to conflicts between the IP's children and an ongoing investigation into alleged inappropriate conduct and transactions, Ms. Privette was appointed full guardian of the person and estate on December 23, 2009. At the time of appointment Respondent was ordered to obtain a \$50,000 bond.<sup>1</sup> Respondent obtained a \$50,000 bond on March 9, 2010, 76 days after appointment. Subsequently, Letters of Guardianship were issued March 16, 2010, 83 days after appointment.<sup>2</sup> Between the date of appointment and the date Letters of Guardianship were issued, invoices from Sound Guardianship indicate Respondent performed the following tasks on behalf of GS:

- Conferred with attorneys.
- Applied for a bond.
- Submitted three change of address.
- Met with living facility staff.

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<sup>1</sup> A guardianship bond guarantees the legal guardian's performance of all guardianship duties. When required, it acts as a form of insurance that protects the well being of the IP.

<sup>2</sup> Letters of guardianship are a record of the court's entrustment of care to a guardian. They serve as proof of appointment and authority to take action in a guardianship. Guardians are required to obtain letters of guardianship prior to taking any action in guardianship.

- Prepared initial report.
- Reviewed care plan.
- Obtained bonds, financial information and personal property from attorney.
- Transported GS to physician after a fall.
- Prepared letters to change care.
- Conferred with physician.
- Communicated with company regarding GS's pension.

**2.3** On December 28, 2009, five days after appointment, an attorney for one of the IP's children gave Respondent extensive detailed information regarding the financial affairs of the IP, including bank records and evidence of financial exploitation. On May 17, 2010, Respondent filed the Initial Report, Care Plan and Inventory of Guardian which included a preliminary inventory. On February 16, 2011, Respondent filed an Interim Status Report. Both the Initial Report and the Interim Status Report indicated the Respondent had not marshaled all assets (cash and personal property). In addition, more than one year after appointment, Respondent had not been recognized as having the authority to receive information about the IP's financial accounts with Boeing Employees Credit Union (BECU). According to the Respondent, the delay in receiving inform from BECU regarding the accounts related partially to the complex issues concerning acting as a full guardian of the person of GS, due in part to the inappropriate conduct and transactions of some of the IP's children.

**2.4** As of March 2011, fifteen months after appointment, the Respondent had not taken any action to investigate the alleged financial exploitation of the IP. On March 7,

2011, one of GS's daughters requested and the court approved appointment of an independent Certified Public Accountant to complete the financial analysis needed to marshal assets. The Respondent did not object to this appointment. No information has been presented to the Board regarding injury or damage having occurred to the IP or the IP's estate based on the Respondent's failure to marshal assets in a timely fashion.

2.5 On or about May 5, 2010, Respondent moved the IP to a senior living community in Puyallup, Washington that provides Alzheimer's and dementia care. According to the Respondent, the IP was moved to provide her with greater structure and supervision and to lessen the pressures from some of her children that preclude her from fully integrating at her prior residence. Family and friends, however, were not informed of the IP's location or given any reason for moving GS. According to the Respondent, the IP's children were told only that she was being moved based on the refusal of her prior facility to allow her to remain there. A letter to the facility, from the Respondent, dated May 14, 2010, informed the facility that per her directive the IP's family and friends were to be given no information about the IP or her location. Per the directive, the IP's family and friends were prohibited from speaking or visiting with the IP for approximately two months. In a letter dated May 19, 2010, Respondent provided similar written instructions to the facility the IP was being moved from. According to Sound Options, the agency responsible for preparing the visit schedule for the IP, all visits by family and friends with the IP were suspended on or about May 5, 2010 to June 17, 2010.

**Guardianship of EB, Thurston County Superior Court Case No. 10-4-00620-1**

**2.6** On or about April 25, 2011, the Board opened a second grievance, CPGB 2011-018, based on allegations that Respondent did not assume responsibility for EB's financial affairs in a timely manner and did not initiate meaningful contact with EB within a reasonable time after appointment.

**2.7** On February 28, 2011, Respondent was appointed full guardian of the person and estate. On March 21, 2011, twenty-one days after appointment, Letters of Guardianship were issued to Respondent. Between the date of appointment and the date Letters of Guardianship were issued, invoices from Sound Guardianship indicate Respondent performed the following tasks on behalf of EB.

- Communicated with Guardian ad litem and obtained documents.
- Obtained documents from attorney.
- Phone calls to former caregiver, neighbor and sister.

**2.8** Respondent met with the IP personally for the first time on April 11, 2011. A bookkeeper employed by the Respondent met with the IP on March 1, 2011.

**Applications Regulations 100**

**2.12** On or about October 27, 2011 Jean Bohling and Maureen Carroll, certified professional guardians terminated employment with Respondent.

**2.13** Pam Privette has been the only certified professional guardian working for Sound Guardianship, LLC from November 1, 2011 to present.

### 3. VIOLATIONS OF STANDARDS OF PRACTICE

**3.1** Based on the facts set forth in paragraphs 2.2 and 2.7, Respondent's conduct constitutes grounds for discipline pursuant to RCW 11.88.127, which provides that a guardian may not act on behalf of the incapacitated person without valid letters of guardianship, and pursuant to Standards of Practice 401.1 and 401.4 which provide in pertinent part:

**SOP 401.1** 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 statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

**SOP 401.4** The guardian shall not act outside of the authority granted by the court.

**3.2** Based on the facts set forth in paragraph 2.2, Respondent's conduct constitutes grounds for discipline pursuant to RCW 11.88.100, which provides that when a bond is required, it must be obtained and filed before letters of guardianship are issued, and pursuant to Standards of Practice 401.1, 401.4 and 406.2 which provide in pertinent part:

**SOP 401.1** 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 statutes which govern the conduct of the guardian in the management of affairs of an incapacitated person.

**SOP 401.4** The guardian shall not act outside of the authority granted by the court.

**SOP 406.2** The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

**3.3** Based on the facts set forth in paragraphs 2.3, 2.4, and 2.8, this conduct constitutes grounds for discipline pursuant to Standards of Practice 401.5 which provide in pertinent part:

**SOP 401.5** The guardian shall protect the personal and economic interests of the incapacitated person and foster growth, independence, and self-reliance.

**3.4** Based on the facts set forth in paragraph 2.5, the Respondent's conduct constitutes grounds for discipline pursuant to Standards of Practice 401.9 and 404.6 which provide in pertinent part:

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

**SOP 404.6** A relocation should include consultation with professionals actively involved in the care of the incapacitated person, the incapacitated person, objective third parties and, whenever possible, appropriately involved family and friends of the incapacitated person.

**3.5** Based on the facts set forth in paragraphs 2.8, Respondent's conduct constitutes grounds for discipline pursuant to Standard of Practice 401.15 which provides in pertinent part:

**SOP 401.15** Guardians of the Person shall have meaningful in-person contact with their clients as needed 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.

#### **4 VIOLATION OF REGULATIONS**

**4.1** Based on the facts set forth in paragraphs 2.12 and 2.13, Respondent's conduct constitutes grounds for discipline pursuant to Regulation 119 which provides in pertinent part:

**119.1** Pursuant to General Rule of Court (GR) 23, a certified agency must have at least two individual certified professional guardians designated as having final decision-making authority for incapacitated persons or their estates ("designated guardians").

**119.2** If a change in circumstances results in an agency having only one designated guardian, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The agency shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian to the agency. During that sixty-day period, the agency must file a copy of its board minutes or a board resolution designating an additional guardian as a person with decision-making authority for incapacitated persons or their estates with the Certified Professional Guardian Board. If the agency fails to meet the requirements of GR 23 and these regulations regarding the required number of designated guardians, the Board may decertify the agency. The Board shall send the agency written notice that the Board intends to decertify the agency at least fifteen (15) calendar days before the Board takes action.

**119.3** If a change in circumstances results in an agency no longer having any designated guardians, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The AOC shall send the agency a notice of noncompliance by mail. The notice shall state that the Board will decertify the agency unless within fifteen (15) calendar days the agency files proof with the Board that the agency has at least one designated guardian. Said proof shall be in the form of board minutes or a board resolution designating a certified professional guardian with decision-making authority for incapacitated persons or their estates. If the agency files proof with the Board that it has one designated guardian, then Regulation 119.2 shall apply. The sixty-day period referenced in Regulation 119.2 shall be deemed to have commenced on the same date as the fifteen-day period in this regulation. If the agency does not file proof within the fifteen-day period in this regulation that the agency has at least one designated guardian, then the Board may decertify the agency.

**119.4** If a change in circumstances results in an agency having no designated guardians, the agency shall within ten (10) calendar days notify any Superior

Court that has appointed the agency as guardian in a case that is still an active guardianship case. The agency shall file a notice in each active guardianship case stating that the agency has no designated certified professional guardian with final decision-making authority for incapacitated persons or their estates. In the notice, the agency shall describe a plan to correct this situation or to transition the guardianships to qualified guardians or agencies. The agency shall file a copy of this notice with the Board. If the agency fails to file this notice with the court or the Board, the Board may decertify the agency.

**119.5** The Board may decertify an agency for its failure to file any notice required under Regulation 119. The Board shall send the agency notice at least fifteen (15) calendar days before the Board intends to take such action.

**4.2** Based on the facts and violations set forth above, Respondent's conduct constitutes grounds for discipline pursuant to General Rule (GR) 23(c)(2)(viii) and Disciplinary Regulation (DR) 503, which provide in pertinent part:

**GR 23** Rule for Certifying Professional Guardians – Certified Professional Guardian Board...

**(2) Duties and Powers....**

**(viii) Grievances and Discipline.** The Board shall adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, or regulation. The Board may impose sanctions upon a finding of violation. Sanctions may include decertification or lesser remedies or actions designed to ensure compliance with duties, standards, and requirements for professional guardians.

**DR 503** A professional guardian may be subject to disciplinary action for any of the following:

**DR 503.1** Violation of or noncompliance with applicable statutes, court orders, court rules, or other authority.

**DR 503.3** Failure to perform any duty one is obligated to perform as a professional guardian.

**DR 503.4** Violation of the oath, duties, or standards of practice of a professional guardian.

## **5. AGGRAVATING AND MITIGATING FACTORS**

Pursuant to DR 515.1.4, the Board may consider the existence of aggravating and mitigating factors in determining the sanctions to be imposed.

**5.1 Aggravating Factors.** None.

**5.2 Mitigating Factors.** None.

## **6. PRIOR RECORD OF DISCIPLINE**

Ms. Privette has no prior record of discipline with the Board.

## **7. DISCIPLINARY SANCTIONS AND REMEDIES**

The Board imposes the following disciplinary sanctions and remedies on Respondents for the conduct described in this Agreement. Pursuant to DR 515.1, any disciplinary sanction or remedy imposed by the Board on a certified guardian is a disciplinary sanction.

**7.1 Letter of Reprimand.** The Board hereby imposes a letter of reprimand on Respondents. This Agreement constitutes the letter of reprimand and shall be placed in the Board's disciplinary files for Respondents.

**7.2 Revocation of Certification.** Sound Guardianship, LLC will be decertified for failure to have two designated guardians. Ms. Privette will revise all Orders Appointing and Letters of Guardianship for Sound Guardianship, LLC to reflect appointment of Pam Privette as an individual certified professional guardian. Ms. Privette will submit official copies of revised documents to the Board within 90 days of this signed agreement.

## **8. COSTS**

**8.1 Reimbursement.** Respondents shall not assess IPs fees for responding to grievances CPGB 2011-007 and CPGB 2011-018 or complaints that flowed from said grievances. Respondent shall reimburse the Board \$3,000.00.

## **9. VIOLATION OF AGREEMENT**

**9.1** Failure to comply with the terms of this Agreement shall constitute additional grounds for discipline pursuant to DR 514.4. Failure to comply includes, but is not limited to, failing to have current letters of guardianship, failing to have meaningful contact with any incapacitated person for whom they serve as guardians, and failure to assume responsibility to protect and preserve the guardianship estate of any incapacitated person for whom they serve as guardian.

**9.2** In the event of an alleged breach of this Agreement, the Board will issue a Complaint pursuant to its Disciplinary Regulations, providing notice and an opportunity for a hearing to the certified professional guardian agency and to the certified professional guardians alleged to be in breach of the Agreement. If the Board finds that Suspension Pending Disciplinary Proceedings is warranted, it may proceed pursuant to Disciplinary Regulation 519.

**9.3** This Agreement is binding as a statement of all known facts relating to the conduct of Respondents but any additional existing acts may be proven in any subsequent disciplinary proceedings.

## **10. NOTICE**

This Agreement shall be retained by the AOC in Respondents' disciplinary files. This Agreement is a public document and shall be open to public access and disclosure. Notice of the discipline imposed shall be sent to all superior courts pursuant to DR 514.3.2.

## **11. ENTIRE AGREEMENT**

This Agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written amendment signed by all parties.

## **12. SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason, the remainder of the Agreement will not be affected.

## **13. LAWS GOVERNING**

This Agreement shall be governed by the laws of the state of Washington, and any question arising from the Agreement shall be construed or determined according to such law. This Agreement is a public record and is subject to public disclosure or release.

**14. RIGHT TO COUNSEL**

Respondents acknowledge that they have the right to individual counsel for representation in this disciplinary matter, at their own expense, as set forth in Disciplinary Regulation 509.1.

**15. PRESENTATION OF AGREEMENT TO THE BOARD**

Respondents understand that this Agreement is not binding unless and until it is approved and signed by the Board. If the Board rejects this Agreement, Respondents waives any objection to the participation in the final determination of this matter of any Board member who heard the Agreement presentation.

**COPY RECEIVED, NOTICE OF PRESENTATION WAIVED:**

  
\_\_\_\_\_  
Pam Privette, CPG #~~9616~~ 9714  
Individually and as the President and one of the designated CPGs of Sound Guardianship LLC.

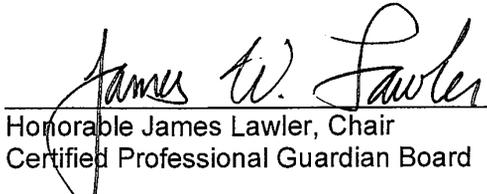
3/12/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
N. Joseph Lynch  
Attorney for Respondent  
WSBA #7481

3/12/13  
\_\_\_\_\_  
Date

**APPROVED AND ORDERED BY THE CERTIFIED PROFESSIONAL GUARDIAN BOARD THIS**

8 day of April, 2013.

  
\_\_\_\_\_  
Honorable James Lawler, Chair  
Certified Professional Guardian Board

Agreement Regarding Discipline  
(CPGB 2011-007 and 018)  
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**Public Comments**



- **Mindi R. Blanchard, M.Ed., CPG**  
President

April 11, 2013

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

Re: Public Comments

Dear Judge Lawler,

I had been unaware that there was a time limit on the public comments, so I am submitting my full talk from April 8, 2013 and requesting that this be put into the minutes:

Good Morning and thank you for allowing me to speak to you today. My name is Mindi Blanchard and I am President of Bridge Builders, Ltd, a guardian agency located in Sequim on the North Olympic Peninsula. I have been a CPG since 2002 and Bridge Builders, Ltd. celebrated its 10<sup>th</sup> anniversary in business in January. We have been providing an annual two-day CPG continuing education conference since 2004 and also provide some additional continuing education.

I read the board meeting documents and minutes faithfully and I have been very concerned about the negative public opinion regarding professional guardians. We at Bridge Builders, Ltd. strive for best practices, not just the minimum standards of practice. We have built a good reputation as ethical guardians in our community. We practice transparency by putting our documentation directly onto our monthly invoices so that there is no question about what is being billed. We have no problem providing our invoices and financial reports to clients or appropriate other parties when requested. When families go to some local attorneys regarding a possible guardianship for a family member, these attorneys will often ask them to talk with us first because we are willing to explain the guardianship process and sometimes we can even give them suggestions on how to use their current power of attorney [if they have one] to make the situation work a while longer, possibly getting them past the current difficult period. We will look up the CPGs in their area and strongly suggest they interview them and even give them questions to ask. I consider this good business marketing and we don't expect to become the guardian in these potential guardianships. In our work with our clients we consider everyone involved with our clients from facilities to medical professionals to

**PO Box 182 • Sequim, WA 98382**

**Phone: (360) 683-8334 • Fax: (360) 683-8358 • [www.bridgebldrs.com](http://www.bridgebldrs.com)**

family members as part of our overall team to benefit our clients. I have literally received calls from all over the State and from other parts of the country asking if there is a business like ours in their area. Unfortunately, you can't franchise this type of business because working with people is not like making hamburgers at McDonald's.

I, too, am concerned about the industry of guardianship because of what I see and hear.

I have found myself saying that someone needs to develop a mentoring program for new guardians; someone needs to provide a venue where guardians can get concrete help when they find themselves in a situation that is over their heads or they get into trouble; someone needs to find a way to provide financial assistance for continuing education and for liability insurance to those guardians who are struggling financially; someone needs to develop a place where guardians can get "best practices" guidelines on how to conduct their practice; someone should see that exemplary guardians get rewarded for a job well done; someone should collect and distribute success stories so that the public will have a balanced view of guardians.

I kept looking for that "someone" to materialize, and I finally found that "someone"... me.

Because of this revelation, I have decided to start a non-profit component of Bridge Builders, Ltd in order to develop programs and provide needed support to help guardians be the best that they can be, not only as guardians but also in business. While guardianship and business seem to be two different things, a CPG can be the best guardian in the world but if he or she can't run a successful business, that guardian is doomed to fail. All guardians who own a business, whether a solo practice or an agency, are entrepreneurs. Statistics show that 80% of all new businesses fail within five years. Guardianship businesses are not exempt from this.

Six years ago when my business partner left, Bridge Builders was in dire straits. I didn't know if I was going to be able to save the business. But somewhere along the way I developed a passion for this business and with the help of a business advisor and a lot of hard work I have built my business into what it is today... something my staff and I can be proud of. In fact, my business improvement prompted my business advisor to nominate me for the SBA Small Business Person of the Year Award for 2011. My tiny little business competed against multi-million dollar "small" businesses and here was Bridge Builders, Ltd. on the finalist short list. I realized then that I am in a unique position to help other guardians who are struggling.

Sometimes when the guardian board updates or develops a standard of practice I'm challenged to figure out how to make the new or changed standard work in the context of my business and I know that I am not alone. I'm not suggesting that the CPG board do things differently but I want a venue where we experienced guardians can use our collective knowledge in guardianship and in business to sort through such issues, develop illustrations of how these changes might look in various business settings and then make them available to less experienced guardians.

I think that CPGs can be instrumental in assisting lay guardians who don't have the education or benefit of extensive experience and training. This year, for the first time, a

lay guardian attended part of the Bridge Builders conference. She said that lay guardians need this kind of continuing education as well. Lay guardians are often caregivers so being away for any length of time might not be an option. But I want to figure out a way to make the expertise of CPGs and make continuing education accessible to lay guardians.

I also think that specially trained CPGs can be instrumental in providing structure to identified individuals with traumatic brain injury, mental illness or the developmentally disabled in order to stabilize their situations and improve their lives thereby lowering the rate of recidivism through jail and mental health crisis centers and helping them become contributing members of society. After witnessing the amazing improvement in one of our guardianship clients, of whom we were told by medical professionals and more experienced guardians that there was no hope, I think that this is a very real possibility and I want to try for grants to see if I'm right.

I proposed my idea to the 75 attendees at our March CPG continuing education conference and received positive feedback. I want to let you know of my vision and, if you would like, I would be happy to provide periodic updates.

Sincerely,

Mindi R. Blanchard, M.Ed., CPG

### One View of Public Disclosure

**Every piece of withheld information *risks* making the “big picture” harder to understand, for all concerned.**

### Questions on Complaint Processing, Learned from Studying the WA Health Department’s UDA

1. What is the percentage of complaints dismissed without investigation? Are these “unfounded” complaints. What are the consequences, costs of these complaints?  
See page 2.
2. What is the meaning of “Serious Disciplinary Actions” for practitioners, for a profession? Is the rate unusually high for professional guardians?  
See page 3.
3. The time required to finalize disciplinary action can be many months, even multiple years. This appears to be true for all professions. What is the consequence, from a “policy” point of view, of delayed disclosure?
4. What could be learned from studying other professions? In Washington State, or Nationally? e.g., CPA accountants, financial advisors, attorneys, Judges.

### One Advocate’s View of Factors That Make Better Boards “Better”

1. Adequate funding (all money from license fees going to fund board activities instead of going into the state treasury for general purposes)
2. Adequate staffing
3. Proactive investigations rather than only reacting to complaints
4. The use of all available/reliable data from other sources, such as Medicare and Medicaid sanctions, hospital sanctions, malpractice payouts, and the criminal justice system
5. Excellent leadership
6. Independence from state medical societies
7. Independence from other parts of the state government so that the board has the ability to develop its own budgets and regulations
8. A reasonable legal standard for discipline (“preponderance of the evidence” rather than “beyond a reasonable doubt” or “clear and convincing evidence”)
- 9.

### RCW 18.130 “Parsed”

See Page 4.

## Complaint Handling

## CPGB Long Range Planning

### % of complaints, deemed not to merit further investigation

- Are these “unfounded” complaints?
  - Frivolous, malicious, manipulative?
- What is the % of CPGB complaints?
- How much of a burden are they:
  - On the “system” ?
  - For practitioners?
- Implications for guardians?
- Are these numbers, ranking valid?

	Practitioners (P.57)	Number of Complaints Received (PP 63-64)		Closed Prior to Investigatn (PP 67-68)	% Closed Prior
Social Workers "Advanced"	96	13	14%	12	92%
Licensed Practical Nurses	13,975	1,025	7%	729	71%
Registered Nurses (ARNP?)	83,381	2,371	3%	1,448	61%
Hypnotherapists	683	19	3%	10	53%
Naturopathic Physicians	1,035	46	4%	23	50%
Social Workers Ind "Clinical"	3,322	124	4%	61	49%
Physical Therapists	5,577	91	2%	43	47%
Mental Health Counselors	5,099	227	4%	104	46%
Osteopathic Physicians	1,261	186	15%	82	44%
Sex Offender Treatment Providr	149	30	20%	13	43%
Psychologists	2,422	145	6%	57	39%
Dentists	6,155	991	16%	389	39%
Marriage & Family Therapists	1,237	47	4%	18	38%
Occupational Therapists	2,876	48	2%	18	38%
Pharmacists	8,861	313	4%	115	37%
Veterinarians	3,343	240	7%	78	33%
Physicians	25,783	2,532	10%	713	28%
Chiropractors	2,334	343	15%	96	28%
Nursing Home Administrator	453	116	26%	31	27%
Chemical Dependency Profnl.	2,821	490	17%	103	21%

UDA TOTALS      381,089      17,609    5%      9,013    51%

Professional Guardians      293      50    17%

Per 2009-11 Biennial Report, Health Systems Quality Assurance, Washington State

20130408\_CPGB\_LongRangePlanning\_ComplaintHandlingQuestions.docx Page 2 of 4

## Complaint Handling

## CPGB Long Range Planning

### Serious Discipline Per 1,000 Practitioners

- Are "Serious Discipline" counts a useful measure?
- Can a discipline system be "counter productive" ?  
If so, when? Under what circumstances?
- What proportion of valid CPG complaints are captured by the current "grievance" system?
- Are these numbers, ranking valid?

	Practitioners (P.57)	Number of Complaints Received (PP 63-64)	%	Closed Prior to Investigatn (PP 67-68)	% Prior	Closed, Withdrawn etc.	Sanctions Imposed (P.89)	Serious Discipline Per1,000 Practners	
Chemical Dependency Profnl.	2,821	490	17%	103	21%	271	154	54.6	S
Sex Offender Treatment Providr	149	30	20%	13	43%	31	3	20.1	S
Chiropractors	2,334	343	15%	96	28%	285	44	18.9	C
Nursing Home Administrator	453	116	26%	31	27%	93	8	17.7	B
Dentists	6,155	991	16%	389	39%	901	77	12.5	C
Osteopathic Physicians	1,261	186	15%	82	44%	178	14	11.1	B
Veterinarians	3,343	240	7%	78	33%	208	31	9.3	B
Physicians	25,783	2,532	10%	713	28%	2,239	171	6.6	C
Psychologists	2,422	145	6%	57	39%	137	15	6.2	B
Pharmacists	8,861	313	4%	115	37%	288	53	6.0	B
Licensed Practical Nurses	13,975	1,025	7%	729	71%	933	83	5.9	?
Mental Health Counselors	5,099	227	4%	104	46%	219	25	4.9	S
Marriage & Family Therapists	1,237	47	4%	18	38%	46	6	4.9	S
Registered Nurses (ARNP?)	83,381	2,371	3%	1,448	61%	2,141	248	3.0	C
Hypnotherapists	683	19	3%	10	53%	16	2	2.9	S
Naturopathic Physicians	1,035	46	4%	23	50%	40	3	2.9	AC
Occupational Therapists	2,876	48	2%	18	38%	31	5	1.7	B
Social Workers Ind "Clinical"	3,322	124	4%	61	49%	129	4	1.2	S
Physical Therapists	5,577	91	2%	43	47%	82	5	0.9	B
Social Workers "Advanced"	96	13	14%	12	92%	14	0	0.0	S
<b>UDA TOTALs</b>	<b>381,089</b>	<b>17,609</b>	<b>5%</b>	<b>9,013</b>	<b>51%</b>	<b>15,527</b>	<b>1,942</b>	<b>5.1</b>	
Professional Guardians	293	50	17%				5	17.1	B

Five (5) serious CPG sanctions imposed per year is an estimate. It excludes continuing education credit violations, and all but the most serious and repeated delays in meeting court filing dates.

Statistics taken from 2009-11 Biennial Report, Health Systems Quality Assurance, Washington State

**RCW 18.130 REGULATION OF HEALTH PROFESSIONS —  
UNIFORM DISCIPLINARY ACT “Parsed”**

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a license holder, applicant, or unlicensed person.

The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for

- initial assessment,
- investigation,
- charging,
- discovery,
- settlement, and
- adjudication

of complaints, and shall include

- enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent.

A license holder

- must be notified upon receipt of a complaint, except when the notification would impede an effective investigation.

At the earliest point of time

- the license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file.

- Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority.

- Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department.

- Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a

- written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection.

- Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

I have been told that you will be discussing guardians visiting their wards again. I thought that was decided a few months ago? In case anyone forgot the GAO report of 2010, this is what it says about a professional guardian in Washington State: Is the WAPG happy about what this person did? What do you tell family members when they ask you when was the last time you saw their loved one? I bet they aren't very happy are they?

"In another case, a court appointed attorney found that the guardian failed to visit the ward for 8 months and was 9 months delinquent in filing a personal care plan and asset inventory for the ward". The guardian received disciplinary letters for both cases, but continues to serve as guardian for 86 incapacitated adults. She is also a representative payee for 69 beneficiaries at SSA, 3 beneficiaries at VA and 2 beneficiaries at OPM. Why can't the public find out who did this – or is transparency dead when it comes to the Guardian Board?

In Yesterday's <sup>Seattle</sup> Times, there was an article about Doug Lipp – a Southern California person who runs a consulting firm based on Disney U. Here are two things written up in the article that can apply to guardians.

1. Too many corporate CEOs, forget they need to get out of their offices and walk their workplaces, interacting with employees and customers – in your case, your clients.
2. Keep it human. Wards aren't "attendance numbers. You get so focused on processing patients... you forget you're dealing with humans. They're not just numbers on a spreadsheet – they are a member of someone's family. Someone who is loved. Again: what do you tell family members when they ask when was the last time you saw their family member? Are they happy?

My mother's guardian used a "Case manager" for mom. He only got involved when she got really sick. What's the excuse now? You don't have the time? Or it takes you away from more important work? What's more important than seeing what is going on in real time with your ward? If you can't see your client in person at least once a month, maybe you should be replaced. And why can't the public see who this guardian or agency is? Maybe the US Senate should be told that Washington's guardians are going backwards instead of being proactive when it comes to protecting our most vulnerable citizens.

Thank you.

Monday, April 8, 2013

The Honorable Judge James W. Lawler, Department 2  
Superior Court  
Law & Justice Center, 4th Floor  
345 West Main Street  
Chehalis WA 98532  
(360) 740-1333

Your Honor:

My name is William Morris and I, along with two partners, am currently an interest owner of a Washington limited liability corporation that operates as a guardianship agency in Spokane Washington. I recently came into possession of a packet of information that was provided to CPG Board members in advance of the meeting scheduled for today, April 8, 2012. While no names were used in the materials, the scenario presented mirrors my recent experiences with the Board, and I am writing to clarify several statements that do not appear to be grounded in fact.

The statement of fact, as presented in the documents, indicates “in April 2011, a non-guardian acquired two professional guardian agencies and decided to combine them into one agency.” It continues by stating that “[t]he new owner violated several Board regulations including, failing to notify the Board, the court, and incapacitated persons of the change in circumstance, failure to have two designated guardians responsible for making decisions for incapacitated persons served by the agency, failure to obtain letters of guardianship in the agency name instead of names of individual guardians and according to professional guardians working for the agency, they failed to visit incapacitated persons and provide care as prescribed by standards of practice.” Additionally, the materials indicate that when two of the CPGs employed by the agency decided to leave, the agency was left “without a sufficient number of guardians to properly care for a caseload of 205 incapacitated persons” and that a “Special Master” was assigned by the court to oversee the transition.

If this anecdote is derived from my purchase of two Spokane agencies since April 2011, as I suspect it is, then the Rules Committee has presented a request to the Board that is not based in fact. I purchased Castlemark Guardianships and Trusts in April 2011 and I later purchased Eagle Guardianships and Professional Services, LLC in March 2012. It is patently untrue, to portray these acquisitions as having occurred contrary to the Standards of Practice (SOPs) of the Washington State Guardianship Board. The original purchase

of Castlemark occurred prior to the changes in SOP that required notification to clients of the sale of an agency. Despite this, the Agency did contact all Castlemark clients and let them know that a new owner had purchased the agency, but that the services they would receive would not change. The name and CPG number of the agency remained the same and there was no significant disruption in services to any of our clients.

We initially retained both of the former owners as designated CPGs holding decision-making power on behalf of the Agency while we sent a staff person through the required training. As soon as the CPG Board and the Supreme Court approved this staff member as a CPG, one of the former owners resigned, but the other stayed on as a CPG and designated decision-maker. At no time did Castlemark have fewer than the required number of CPGs during this transition from old to new management.

With regard to Letters of Guardianship for clients of Castlemark, when I purchased that agency, it had already undergone several changes in ownership over the course of the previous years. It had operated under multiple trade names including: Castlemark, Castlemark, Inc., and Angel Guardianship, and was also known under the names of its principals (James Whitely and Kim Buer). One of the first priorities of the Agency subsequent to the purchase was to clean up the names by which the Letters of Guardianship had been issued. Our attorney consulted with the Court on this matter and the Agency was notified that the best way to accomplish consistency in Agency name would be to alter the Letters as each annual review date came up. We proceeded to follow this advice, and all Letters of Guardianship were changed to read "Castlemark Guardianships and Trusts" within a year of the purchase.

Early in 2012, the majority interest owner of Eagle Guardianship and Professional Services, LLC contacted me regarding the possibility of my purchasing that agency as well. After much consideration and extended negotiations with all members of the LLC, I decided to go ahead and do so, with the intent of eventually merging the two companies. By this time, the new regulations were in effect, and all clients were notified of the purchase. Again, the name of the agency and its associated CPG number did not change, and two of the four original CPGs associated with Eagle remained on as CPGs under the new management. As with the acquisition of Castlemark, it was brought to my attention, after the purchase, that the Letters of Guardianship issued for Eagle clients were written under several forms including EGAPS, Eagle Guardianship, and Eagle, as well as several that were issued under the names of the former principals of the agency. The Purchase Agreement specifically stated that all clients were to be clients of the Agency, the representation of which the sellers were in breach of the Sale agreement. Again, our staff worked diligently to ensure that all letters were issued under the correct agency name and number.

Our highest priority overall has been to ensure that all of our clients receive the attention they deserve. If the statement of fact was indeed based on these agencies, then the statement attributed to CPGs working for the agency that indicates that our staff "failed to visit incapacitated persons and provide care as prescribed by standards of practice" is absolutely untrue. We have timekeeping records to prove that clients received far more

consistent services from agency staff following our involvement than they had prior to the mergers. In addition to two CPGs assigned as decision makers for both agencies, we also employ several case managers and a financial specialist to ensure that clients are visited regularly, and that their needs are met as they arise. In fact, we expressed concern, after the purchase of Eagle, that clients were not being seen consistently and indicated to the CPGs and the staff involved that this was not acceptable practice. Our records clearly indicate that client contact across the board is up significantly since the date of purchase, especially at Eagle. But, at no time has the Board requested copies of our records to contrive or verify the facts as stated in the circulated documents. It appears, instead, that all of the "facts" presented were derived from hearsay, anecdotal statements, and presumption.

After several months of operating as separate entities, we eventually asked the Board for permission to merge the two agencies under one name and one agency number. This request was taken to the Board and approved in November 2012. It was our intention to move all clients under one agency, Hallmark Care Services, and one Agency CPG number, but we were blindsided when we received resignation notices from the two CPGs who were employed by Eagle. According to the regulations, an Agency facing a lack of CPGs is given time to recruit and hire replacements before the Agency is considered out of compliance with the regulation. The two CPGs from Eagle gave their notice in December and the Agency hired two additional CPGs prior to the end of the month – at no time was the agency out of compliance with the regulations to such an extent that we were unable to provide sufficient oversight to our clients. In fact, the two CPGs who self terminated their employment with the Agency remain interest owners to this day as members of the LLC.

When we started this process, I signed an agreement with the AOC stating that I would not make decisions on the behalf of agency CPGs, nor would I influence the decisions of any of our certified professional guardians. Our agency currently employs three certified professional guardians and we have a fourth staff member currently enrolled in the UW Guardianship Certification Program. While the Spokane County Court Commissioner did decide to engage the services of a "special master guardian," we argue that this decision was unnecessary and was based on the upheaval caused by two CPG/Partners in the Eagle agency who no longer wished to work together as a team on behalf of our clients. I do not believe any of our actions were, at any time, out of compliance with Board regulations. We reviewed the SOPs, RCWs, and Board rules prior to making any decisions, and always believed we were acting in compliance with the applicable standards.

Both my Director of Operations, who is an attorney, and I have graduated from the UW Guardianship Certification course, but were denied the right, by the Board, to become CPGs based on factors which I believe were not only capricious, but were also a conflict of interest, give that some of the decision-makers were owners of competing companies. Despite the lack of subsequent certification, we received the same training as all other CPGs in the state, and we both passed the course with high marks. If our agency has failed, then I would characterize this as a failure in the training provided to new CPGs on

how to operate an effective CPG agency, rather than as the failure of a non-CPG who knows nothing of the role of the guardian.

I have worked for 30 years in the Spokane area as a professional supporting people with developmental disabilities. I was very involved with Willa Johns from the ARC of Spokane as well as several other professionals in our community in advocating for a board that oversees professional guardians, and I support strong oversight of professional guardians, but I do not feel that the proposal regarding non-CPG ownership of a CPG Agency is needed or required. As long as the non-CPG agrees to not influence the decisions of the employed CPGs in the agency (as I did in my agreement with the Board), or even takes the required CPG training, there is no need to prohibit free enterprise or make it more difficult for Guardianship Agencies in our state to thrive.

Again, thank you for your time.

Submitted Respectfully,

A handwritten signature in black ink, appearing to read "William Morris". The signature is fluid and cursive, with a large initial "W" and "M".

William Morris  
Partner, Castlemark Guardianships and Trusts  
1626 West Providence Avenue  
Spokane, WA 99205  
509.474.0721



# Skagit County Superior Court

Skagit County Courthouse  
205 West Kincaid Street, Room 202  
Mount Vernon, WA 98273

Phone: (360)336-9320  
Fax: (360)336-9340  
E-mail: superiorcourt@co.skagit.wa.us

**JOHN M. MEYER**  
JUDGE, DEPARTMENT NO. 1

**MICHAEL E. RICKERT**  
JUDGE, DEPARTMENT NO. 2

**SUSAN K. COOK**  
JUDGE, DEPARTMENT NO. 3

**DAVE NEEDY**  
JUDGE, DEPARTMENT NO. 4

**G. BRIAN PAXTON**  
COURT COMMISSIONER

**DELILAH M. GEORGE**  
COURT ADMINISTRATOR

**RECEIVED**  
**APR 17 2013**  
**REED, LONGYEAR,**  
**MALNATI & AHRENS, PLLC**

April 16, 2013

Skagit County Superior Court is considering establishing a policy of appointing professional guardians in difficult, low finance cases from a rotating registry. Except in extraordinary circumstances the guardian appointed should be the person whose name next appears on the registry. This proposed policy is being considered in light of recent difficulty in finding professional guardians willing to take on such cases. Skagit County currently has over 300 active Guardianship cases. Most of those cases have family members appointed as guardian of the incapacitated person. However, in approximately 25% of our cases a professional guardian is appointed.

There are at least six current cases in Skagit County where DSHS is unable to find a state certified professional willing to serve as guardian. This situation may have arisen as a result of the recent ruling in Raven v. Department of Social & Health Services, 167 Wash. App. 446, 273 P.3d 1017, where the Court held that a professional guardian was liable for negligence based upon the standard created in the Abuse of Vulnerable Adults Act rather than common law negligence.

We are seeking input from professional guardians who practice in Skagit County about this proposed policy. Also feel free to let us know if you have another idea which might be worth considering. Please address your comments or inquiries to Skagit County Guardianship Monitoring Program, C/O Kristen Denton, Coordinator by May 15, 2013.

Sincerely,

**JOHN M. MEYER, Presiding  
Superior Court Judge**

**SB 5510 - H AMD 479**

By Representative Pedersen

**ADOPTED 04/25/2013**

1           Strike everything after the enacting clause and insert the  
2 following:

3           "**Sec. 1.** RCW 74.34.020 and 2012 c 10 s 62 are each amended to read  
4 as follows:

5           The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7           (1) "Abandonment" means action or inaction by a person or entity  
8 with a duty of care for a vulnerable adult that leaves the vulnerable  
9 person without the means or ability to obtain necessary food, clothing,  
10 shelter, or health care.

11           (2) "Abuse" means the willful action or inaction that inflicts  
12 injury, unreasonable confinement, intimidation, or punishment on a  
13 vulnerable adult. In instances of abuse of a vulnerable adult who is  
14 unable to express or demonstrate physical harm, pain, or mental  
15 anguish, the abuse is presumed to cause physical harm, pain, or mental  
16 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,  
17 and exploitation of a vulnerable adult, which have the following  
18 meanings:

19           (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
20 including but not limited to unwanted or inappropriate touching, rape,  
21 sodomy, sexual coercion, sexually explicit photographing, and sexual  
22 harassment. Sexual abuse includes any sexual contact between a staff  
23 person, who is not also a resident or client, of a facility or a staff  
24 person of a program authorized under chapter 71A.12 RCW, and a  
25 vulnerable adult living in that facility or receiving service from a  
26 program authorized under chapter 71A.12 RCW, whether or not it is  
27 consensual.

28           (b) "Physical abuse" means the willful action of inflicting bodily  
29 injury or physical mistreatment. Physical abuse includes, but is not  
30 limited to, striking with or without an object, slapping, pinching,

1 choking, kicking, shoving, prodding, or the use of chemical restraints  
2 or physical restraints unless the restraints are consistent with  
3 licensing requirements, and includes restraints that are otherwise  
4 being used inappropriately.

5 (c) "Mental abuse" means any willful action or inaction of mental  
6 or verbal abuse. Mental abuse includes, but is not limited to,  
7 coercion, harassment, inappropriately isolating a vulnerable adult from  
8 family, friends, or regular activity, and verbal assault that includes  
9 ridiculing, intimidating, yelling, or swearing.

10 (d) "Exploitation" means an act of forcing, compelling, or exerting  
11 undue influence over a vulnerable adult causing the vulnerable adult to  
12 act in a way that is inconsistent with relevant past behavior, or  
13 causing the vulnerable adult to perform services for the benefit of  
14 another.

15 (3) "Consent" means express written consent granted after the  
16 vulnerable adult or his or her legal representative has been fully  
17 informed of the nature of the services to be offered and that the  
18 receipt of services is voluntary.

19 (4) "Department" means the department of social and health  
20 services.

21 (5) "Facility" means a residence licensed or required to be  
22 licensed under chapter 18.20 RCW, assisted living facilities; chapter  
23 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;  
24 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential  
25 habilitation centers; or any other facility licensed or certified by  
26 the department.

27 (6) "Financial exploitation" means the illegal or improper use,  
28 control over, or withholding of the property, income, resources, or  
29 trust funds of the vulnerable adult by any person or entity for any  
30 person's or entity's profit or advantage other than for the vulnerable  
31 adult's profit or advantage. "Financial exploitation" includes, but is  
32 not limited to:

33 (a) The use of deception, intimidation, or undue influence by a  
34 person or entity in a position of trust and confidence with a  
35 vulnerable adult to obtain or use the property, income, resources, or  
36 trust funds of the vulnerable adult for the benefit of a person or  
37 entity other than the vulnerable adult;

1 (b) The breach of a fiduciary duty, including, but not limited to,  
2 the misuse of a power of attorney, trust, or a guardianship  
3 appointment, that results in the unauthorized appropriation, sale, or  
4 transfer of the property, income, resources, or trust funds of the  
5 vulnerable adult for the benefit of a person or entity other than the  
6 vulnerable adult; or

7 (c) Obtaining or using a vulnerable adult's property, income,  
8 resources, or trust funds without lawful authority, by a person or  
9 entity who knows or clearly should know that the vulnerable adult lacks  
10 the capacity to consent to the release or use of his or her property,  
11 income, resources, or trust funds.

12 (7) "Financial institution" has the same meaning as in RCW  
13 30.22.040 and 30.22.041. For purposes of this chapter only, "financial  
14 institution" also means a "broker-dealer" or "investment adviser" as  
15 defined in RCW 21.20.005.

16 (8) "Incapacitated person" means a person who is at a significant  
17 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),  
18 (c), or (d).

19 (9) "Individual provider" means a person under contract with the  
20 department to provide services in the home under chapter 74.09 or  
21 74.39A RCW.

22 (10) "Interested person" means a person who demonstrates to the  
23 court's satisfaction that the person is interested in the welfare of  
24 the vulnerable adult, that the person has a good faith belief that the  
25 court's intervention is necessary, and that the vulnerable adult is  
26 unable, due to incapacity, undue influence, or duress at the time the  
27 petition is filed, to protect his or her own interests.

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

35 (12) "Neglect" means (a) a pattern of conduct or inaction by a  
36 person or entity with a duty of care that fails to provide the goods  
37 and services that maintain physical or mental health of a vulnerable  
38 adult, or that fails to avoid or prevent physical or mental harm or

1 pain to a vulnerable adult; or (b) an act or omission by a person or  
2 entity with a duty of care that demonstrates a serious disregard of  
3 consequences of such a magnitude as to constitute a clear and present  
4 danger to the vulnerable adult's health, welfare, or safety, including  
5 but not limited to conduct prohibited under RCW 9A.42.100.

6 (13) "Permissive reporter" means any person, including, but not  
7 limited to, an employee of a financial institution, attorney, or  
8 volunteer in a facility or program providing services for vulnerable  
9 adults.

10 (14) "Protective services" means any services provided by the  
11 department to a vulnerable adult with the consent of the vulnerable  
12 adult, or the legal representative of the vulnerable adult, who has  
13 been abandoned, abused, financially exploited, neglected, or in a state  
14 of self-neglect. These services may include, but are not limited to  
15 case management, social casework, home care, placement, arranging for  
16 medical evaluations, psychological evaluations, day care, or referral  
17 for legal assistance.

18 (15) "Self-neglect" means the failure of a vulnerable adult, not  
19 living in a facility, to provide for himself or herself the goods and  
20 services necessary for the vulnerable adult's physical or mental  
21 health, and the absence of which impairs or threatens the vulnerable  
22 adult's well-being. This definition may include a vulnerable adult who  
23 is receiving services through home health, hospice, or a home care  
24 agency, or an individual provider when the neglect is not a result of  
25 inaction by that agency or individual provider.

26 (16) "Social worker" means:

27 (a) A social worker as defined in RCW 18.320.010(2); or

28 (b) Anyone engaged in a professional capacity during the regular  
29 course of employment in encouraging or promoting the health, welfare,  
30 support, or education of vulnerable adults, or providing social  
31 services to vulnerable adults, whether in an individual capacity or as  
32 an employee or agent of any public or private organization or  
33 institution.

34 (17) "Vulnerable adult" includes a person:

35 (a) Sixty years of age or older who has the functional, mental, or  
36 physical inability to care for himself or herself; or

37 (b) Found incapacitated under chapter 11.88 RCW; or

1 (c) Who has a developmental disability as defined under RCW  
2 71A.10.020; or

3 (d) Admitted to any facility; or

4 (e) Receiving services from home health, hospice, or home care  
5 agencies licensed or required to be licensed under chapter 70.127 RCW;  
6 or

7 (f) Receiving services from an individual provider; or

8 (g) Who self-directs his or her own care and receives services from  
9 a personal aide under chapter 74.39 RCW.

10 **Sec. 2.** RCW 74.34.035 and 2010 c 133 s 4 are each amended to read  
11 as follows:

12 (1) When there is reasonable cause to believe that abandonment,  
13 abuse, financial exploitation, or neglect of a vulnerable adult has  
14 occurred, mandated reporters shall immediately report to the  
15 department.

16 (2) When there is reason to suspect that sexual assault has  
17 occurred, mandated reporters shall immediately report to the  
18 appropriate law enforcement agency and to the department.

19 (3) When there is reason to suspect that physical assault has  
20 occurred or there is reasonable cause to believe that an act has caused  
21 fear of imminent harm:

22 (a) Mandated reporters shall immediately report to the department;  
23 and

24 (b) Mandated reporters shall immediately report to the appropriate  
25 law enforcement agency, except as provided in subsection (4) of this  
26 section.

27 (4) A mandated reporter is not required to report to a law  
28 enforcement agency, unless requested by the injured vulnerable adult or  
29 his or her legal representative or family member, an incident of  
30 physical assault between vulnerable adults that causes minor bodily  
31 injury and does not require more than basic first aid, unless:

32 (a) The injury appears on the back, face, head, neck, chest,  
33 breasts, groin, inner thigh, buttock, genital, or anal area;

34 (b) There is a fracture;

35 (c) There is a pattern of physical assault between the same  
36 vulnerable adults or involving the same vulnerable adults; or

37 (d) There is an attempt to choke a vulnerable adult.

1 (5) When there is reason to suspect that the death of a vulnerable  
2 adult was caused by abuse, neglect, or abandonment by another person,  
3 mandated reporters shall, pursuant to RCW 68.50.020, report the death  
4 to the medical examiner or coroner having jurisdiction, as well as the  
5 department and local law enforcement, in the most expeditious manner  
6 possible. A mandated reporter is not relieved from the reporting  
7 requirement provisions of this subsection by the existence of a  
8 previously signed death certificate. If abuse, neglect, or abandonment  
9 caused or contributed to the death of a vulnerable adult, the death is  
10 a death caused by unnatural or unlawful means, and the body shall be  
11 the jurisdiction of the coroner or medical examiner pursuant to RCW  
12 68.50.010.

13 (6) Permissive reporters may report to the department or a law  
14 enforcement agency when there is reasonable cause to believe that a  
15 vulnerable adult is being or has been abandoned, abused, financially  
16 exploited, or neglected.

17 (7) No facility, as defined by this chapter, agency licensed or  
18 required to be licensed under chapter 70.127 RCW, or facility or agency  
19 under contract with the department to provide care for vulnerable  
20 adults may develop policies or procedures that interfere with the  
21 reporting requirements of this chapter.

22 (8) Each report, oral or written, must contain as much as possible  
23 of the following information:

24 (a) The name and address of the person making the report;

25 (b) The name and address of the vulnerable adult and the name of  
26 the facility or agency providing care for the vulnerable adult;

27 (c) The name and address of the legal guardian or alternate  
28 decision maker;

29 (d) The nature and extent of the abandonment, abuse, financial  
30 exploitation, neglect, or self-neglect;

31 (e) Any history of previous abandonment, abuse, financial  
32 exploitation, neglect, or self-neglect;

33 (f) The identity of the alleged perpetrator, if known; and

34 (g) Other information that may be helpful in establishing the  
35 extent of abandonment, abuse, financial exploitation, neglect, or the  
36 cause of death of the deceased vulnerable adult.

37 (9) Unless there is a judicial proceeding or the person consents,

1 the identity of the person making the report under this section is  
2 confidential.

3 (10) In conducting an investigation of abandonment, abuse,  
4 financial exploitation, self-neglect, or neglect, the department or law  
5 enforcement, upon request, must have access to all relevant records  
6 related to the vulnerable adult that are in the possession of mandated  
7 reporters and their employees, unless otherwise prohibited by law.  
8 Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200,  
9 70.230.080, and 74.42.640 shall not be subject to the requirements of  
10 this subsection. Providing access to records relevant to an  
11 investigation by the department or law enforcement under this provision  
12 may not be deemed a violation of any confidential communication  
13 privilege. Access to any records that would violate attorney-client  
14 privilege shall not be provided without a court order unless otherwise  
15 required by court rule or caselaw.

16 **Sec. 3.** RCW 74.34.067 and 2011 c 170 s 2 are each amended to read  
17 as follows:

18 (1) Where appropriate, an investigation by the department may  
19 include a private interview with the vulnerable adult regarding the  
20 alleged abandonment, abuse, financial exploitation, neglect, or self-  
21 neglect.

22 (2) In conducting the investigation, the department shall interview  
23 the complainant, unless anonymous, and shall use its best efforts to  
24 interview the vulnerable adult or adults harmed, and, consistent with  
25 the protection of the vulnerable adult shall interview facility staff,  
26 any available independent sources of relevant information, including if  
27 appropriate the family members of the vulnerable adult.

28 (3) The department may conduct ongoing case planning and  
29 consultation with: (a) Those persons or agencies required to report  
30 under this chapter or submit a report under this chapter; (b)  
31 consultants designated by the department; and (c) designated  
32 representatives of Washington Indian tribes if client information  
33 exchanged is pertinent to cases under investigation or the provision of  
34 protective services. Information considered privileged by statute and  
35 not directly related to reports required by this chapter must not be  
36 divulged without a valid written waiver of the privilege.

1 (4) The department shall prepare and keep on file a report of each  
2 investigation conducted by the department for a period of time in  
3 accordance with policies established by the department.

4 (5) If the department has reason to believe that the vulnerable  
5 adult has suffered from abandonment, abuse, financial exploitation,  
6 neglect, or self-neglect, and lacks the ability or capacity to consent,  
7 and needs the protection of a guardian, the department may bring a  
8 guardianship action under chapter 11.88 RCW.

9 (6) For purposes consistent with this chapter, the department, the  
10 certified professional guardian board, and the office of public  
11 guardianship may share information contained in reports and  
12 investigations of the abuse, abandonment, neglect, self-neglect, and  
13 financial exploitation of vulnerable adults. This information may be  
14 used solely for (a) recruiting or appointing appropriate guardians and  
15 (b) monitoring, or when appropriate, disciplining certified  
16 professional or public guardians. Reports of abuse, abandonment,  
17 neglect, self-neglect, and financial exploitation are confidential  
18 under RCW 74.34.095 and other laws, and secondary disclosure of  
19 information shared under this section is prohibited.

20 (7) When the investigation is completed and the department  
21 determines that an incident of abandonment, abuse, financial  
22 exploitation, neglect, or self-neglect has occurred, the department  
23 shall inform the vulnerable adult of their right to refuse protective  
24 services, and ensure that, if necessary, appropriate protective  
25 services are provided to the vulnerable adult, with the consent of the  
26 vulnerable adult. The vulnerable adult has the right to withdraw or  
27 refuse protective services.

28 ((+7)) (8) The department's adult protective services division may  
29 enter into agreements with federally recognized tribes to investigate  
30 reports of abandonment, abuse, financial exploitation, neglect, or  
31 self-neglect of vulnerable adults on property over which a federally  
32 recognized tribe has exclusive jurisdiction. If the department has  
33 information that abandonment, abuse, financial exploitation, or neglect  
34 is criminal or is placing a vulnerable adult on tribal property at  
35 potential risk of personal or financial harm, the department may notify  
36 tribal law enforcement or another tribal representative specified by  
37 the tribe. Upon receipt of the notification, the tribe may assume  
38 jurisdiction of the matter. Neither the department nor its employees

1 may participate in the investigation after the tribe assumes  
2 jurisdiction. The department, its officers, and its employees are not  
3 liable for any action or inaction of the tribe or for any harm to the  
4 alleged victim, the person against whom the allegations were made, or  
5 other parties that occurs after the tribe assumes jurisdiction.  
6 Nothing in this section limits the department's jurisdiction and  
7 authority over facilities or entities that the department licenses or  
8 certifies under federal or state law.

9 ((+8)) (9) The department may photograph a vulnerable adult or  
10 their environment for the purpose of providing documentary evidence of  
11 the physical condition of the vulnerable adult or his or her  
12 environment. When photographing the vulnerable adult, the department  
13 shall obtain permission from the vulnerable adult or his or her legal  
14 representative unless immediate photographing is necessary to preserve  
15 evidence. However, if the legal representative is alleged to have  
16 abused, neglected, abandoned, or exploited the vulnerable adult,  
17 consent from the legal representative is not necessary. No such  
18 consent is necessary when photographing the physical environment.

19 ((+9)) (10) When the investigation is complete and the department  
20 determines that the incident of abandonment, abuse, financial  
21 exploitation, or neglect has occurred, the department shall inform the  
22 facility in which the incident occurred, consistent with  
23 confidentiality requirements concerning the vulnerable adult,  
24 witnesses, and complainants."

25 Correct the title.

EFFECT: Identifies two exceptions to the requirement that, during an investigation, mandated reporters must provide law enforcement and the Department of Social and Health Services access to all relevant records in their possession related to the vulnerable adult: (1) Records maintained by professional review boards, quality assurance committees, and quality improvement programs are not subject to the requirement; and (2) access to records will not be provided if that access would violate attorney-client privilege, unless required by a court order or otherwise required by law.

--- END ---



May 13, 2013

TO: Certified Professional Guardian Board  
FROM: Regulations Committee  
RE: Standby Guardians

**Issue:**

Who should serve as a Standby Guardian and what are the duties of a Standby Guardian?

**Proposed Solution:**

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

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

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

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

**Background:**

During the Board's January 14, 2013 meeting, Bill Jaback informed the Board of an issue that the Applications Committee discovered during the review of an application for

certification. The applicant used serving as a Standby Guardian for a Certified Professional Guardian as qualifying experience for certification. The Applications Committee discussed whether a lay person is an appropriate choice for a standby for a professional guardian. The Board's discussion of this issue raised the following additional questions:

- Should the Board limit the number of standby guardian appointments one individual can accept?
- Should the Board establish a standard of practice for professional guardians to develop contingency plans or provide guidance to help professional guardians plan for time off for vacations and illnesses?

Judge Swisher, who was chairing the meeting, asked the Regulations Committee to research the issue and submit a recommendation to the Board during its next meeting. The Regulations Committee met January 16, 2013 and asked staff to draft a proposed standard of practice.

### **Current Relevant SOP**

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

### **Current Relevant Statute**

#### **RCW.11.88.125**

The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW [11.92.150](#) or any person entitled to receive pleadings pursuant to RCW [11.88.095\(2\)\(j\)](#). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court and upon approval of the court, the standby guardian or

limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

**New Statute Amendment Adopted**

The Legislature adopted Senate Bill 5692 relating to standby guardians and limited guardians (see Attachment A). The bill addresses several of the Board's concerns, but does not address the issue of a lay guardian serving as standby guardian for a certified professional guardian.

SB 5692 - H COMM AMD  
By Committee on Judiciary

ADOPTED 04/12/2013

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 11.88.125 and 2011 c 329 s 5 are each amended to read  
4 as follows:

5 (1) (~~The person~~) Any individual or professional guardian  
6 appointed by the court as either guardian or limited guardian of the  
7 person and/or estate of an incapacitated person shall file in writing  
8 with the court, within ninety days from the date of appointment, a  
9 notice designating a standby (~~limited~~) guardian or standby limited  
10 guardian to serve as (~~limited~~) guardian or limited guardian at the  
11 death (~~of~~), legal incapacity, or planned absence of the court-  
12 appointed guardian or limited guardian. The notice shall state the  
13 name, address, zip code, and telephone number of the designated standby  
14 guardian or standby limited guardian. Notice of the guardian's  
15 designation of the standby guardian or standby limited guardian shall  
16 be given to the standby guardian or standby limited guardian, the  
17 incapacitated person and his or her spouse or domestic partner and  
18 adult children, any facility in which the incapacitated person resides,  
19 and any person (~~entitled to~~) who requested special notice under RCW  
20 11.92.150 (~~or any person entitled to receive pleadings pursuant to RCW~~  
21 ~~11.88.095(2)(j)~~). ((Such))

22 (2)(a) If the regularly appointed guardian or limited guardian dies  
23 or becomes incapacitated, then the standby guardian or standby limited  
24 guardian shall have all the powers, duties, and obligations of the  
25 regularly appointed guardian or limited guardian and in addition shall,  
26 within a period of thirty days from the death or adjudication of  
27 incapacity of the regularly appointed guardian or limited guardian,  
28 file with the superior court in the county in which the guardianship or  
29 limited guardianship is then being administered, a petition for  
30 appointment of a substitute guardian or limited guardian. Upon the

Attachment A

1 court's appointment of a new, substitute guardian or limited guardian,  
2 the standby guardian or standby limited guardian shall make an  
3 accounting and report to be approved by the court, and upon approval of  
4 the court, the standby guardian or standby limited guardian shall be  
5 released from all duties and obligations arising from or out of the  
6 guardianship or limited guardianship.

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

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

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

36 (b) Upon the conclusion of the hearing on the planned absence  
37 petition, and a determination by the court that the standby guardian or  
38 standby limited guardian meets the requirements of RCW 11.88.020, the

1 court shall issue an order specifying: (i) The amount of bond as  
2 required by RCW 11.88.100 through 11.88.110 to be filed by the standby  
3 guardian or standby limited guardian; (ii) the duties,  
4 responsibilities, and powers the standby guardian or standby limited  
5 guardian will assume during the planned absence; (iii) the duration the  
6 standby guardian or standby limited guardian will be acting; and (iv)  
7 the expiration date of the letters of guardianship to be issued to the  
8 standby guardian or standby limited guardian.

9 (c) Letters of guardianship consistent with the court's  
10 determination under (b) of this subsection shall be issued to the  
11 standby guardian or standby limited guardian upon filing an oath and  
12 posting a bond as required by RCW 11.88.100. The standby guardian or  
13 standby limited guardian shall give notice of such appointment to the  
14 incapacitated person and his or her spouse or domestic partner and  
15 adult children, any facility in which the incapacitated person resides,  
16 and any person who requested special notice under RCW 11.92.150.

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

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

27 Correct the title.

--- END ---