

2021 Spring Newsletter



Washington Association of
Professional Guardians



Contents

President's Note.....	3
We Care a Lot.....	4
Expedited Legislature.....	6
A Letter to Chief Justice González.....	9
Spring Conference.....	11

President's Note



Hello all and welcome to Spring 2021. First I would like to introduce myself as your current president. After several very successful years at the helm, Gary Beagle has stepped away as president. Fortunately for us all, Gary continues on the board as the immediate past president and will continue to provide useful support for our organization.

I know many of you, but not all. I hope to meet more of our membership throughout my work as your president, and hopefully begin to see us all getting together in person as the challenging year under this pandemic hopefully eases. For us guardians, we have a tremendous responsibility in managing care for a vulnerable population and the pandemic certainly has not eased those challenges.

The board met on for its Spring retreat on February 18, 2021 and has identified the following as projects to focus on for the upcoming year:

Projects/Goals for 2021:

We will again be planning Spring and Fall conferences As many of you know, we design these conferences with the idea of providing for all the CEU credits to maintain your professional guardian certification. We will again be looking a virtual spring platform, using zoom again. By now you should have received a "Save the Date" from Melissa Schwab, our executive director, who will again be hosting and running the meeting. Our continuing education committee is working on completing the agenda. For this Fall we will look at an in-person at SeaTac and update you as we get closer to the date.

We are continuing to monitor the implementation of the Uniform Guardianship, Conservatorship and other Protective Arrangements act (the "UGA"), codified as RCW 11.130, and other legislative and issues that impact guardians. The is a forms committee currently operating to develop forms to comply with the requirements of the UGA. I am currently serving on that committee and we expect those forms to be substantially completed by September. We will certainly be keeping track of this process so that we can all get an early start on integrating those forms into our practice.

We are also tracking various other matters of legislation impacting guardians. Some of that legislation includes:

SB 5132: passed Legislature (waiting for Governor to sign)

- Uniform Electronic Will Act
- Uniform Power of Appointment Act (repeals Chapter 11.95 RCW)
- Uniform Fiduciary Principal and Income Act
- Amendments to Chapter 11.96A RCW

SB 5185: passed both chambers (amendments adopted in House – needs to be voted on in Senate)

- Amends RCW 7.70.065 (informed consent statute) to:
- Establish a rebuttable presumption that an adult has the capacity to make health care decisions
- Allow a health care provider to overcome the presumption of capacity by reasonably determining that the person has demonstrated an inability to understand and appreciate the nature and consequences of a health care condition or proposed treatment
- Makes terminology changes to reflect changes made in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

We work closely with the Washington State Bar Association Elder Law Section, where both board member Michael Longyear and I are executive committee members to also keep current and advocate for positions that



Spring 2021 Newsletter

impact legal issues that are related to our practice area.

We also would like to focus on educating the public about Professional Guardians. As we all know and feel, professional guardians are subject to scrutiny and in some cases distrust by the public. The recent release of the movie *I Care A Lot* unfortunately did little to help that image and painted an wholly inaccurate picture of the nature of guardianships and the law in Washington surrounding the implementation of guardianships. Our communication committee will be working on public education to see if we can perhaps get a more accurate message to the public and continue our efforts as a board to promote the excellence of the professional guardians that make up our membership.

Attorney Deborah Jameson who many of you know responded to the movie in the Washington State Bar News February Edition bringing to the Bar's attention provisions of Washington Law that would prohibit the abuses presented in that movie production. Ms. Jameson has given us permission to reproduce her letter in this newsletter.

Please continue to reference our organization web page, which can be found at <https://wapg.org/> to keep track of further updates.

Your Board is looking forward to the upcoming year and also from continued contributions from all of you – our members – so that together we can continue to grow and implement the very positive impact of our organization.

Sincerely,

Mark C. Vohr, President
Ohana Fiduciary Corporation
A Washington Trust Company



Guardianships in Washington: We Care a Lot

The recent movie about an unscrupulous guardian, "I Care a Lot" may have made you wonder whether anything like what happened in the movie could happen here. Luckily, we live in a state where almost none of what the movie guardian did could happen.

Washington adopted rigorous procedures both for creating and monitoring guardianships in 1997. Washington recently adopted the Uniform Guardianship and Other Protective Arrangement Act (UGA) and it will become fully effective in 2022. Both the current and future law provide significant protections for vulnerable adults—most protections which were missing in the movie.

The movie guardian, in collusion with a doctor, had an emergency guardianship entered without the alleged incapacitated person being present (or notified). Washington currently has no emergency guardianship provision. A guardianship is filed and the alleged incapacitated person receives personal service of the notice within 5 days of the filing. A guardian ad litem is appointed to investigate and a medical/psychological report must be obtained. The alleged incapacitated person must be informed of their right to an attorney (at county expense if they cannot afford one), right to object, and right to a jury trial. The hearing is generally 45 – 60 days after filing. The alleged incapacitated person's presence may be waived, but if they want to be at the hearing, the Court has to go to them.

The UGA will allow for emergency guardianships, but only guardianships involving "person" issues (medical or care decisions) can be created without notice. Even then, the respondent is personally served notice within 48 hours and a hearing is held no later than 5 days after the appointment. Emergency conservatorship always require 14 days' notice and personal service. The Court must also appoint an attorney for the respondent.

The movie guardian she said she acted in the incapacitated person's "best interests" (which oddly enough were in her financial interests, too). Washington law states that a guardian should make medical decisions the incapacitated person would make if they were able to – substituted judgment. Only if a guardian cannot ascertain a person's wishes may they use the best interest standard to make medical decisions.

The movie guardian places one older woman in a secure long-term care facility against her will. Washington law does not allow an incapacitated person to be placed in a facility against their will without going through the civil commitment procedure. One case that highlights this is *Raven v. DSHS*, 177 Wn.2d 804, 306 P.3d 920 (2013) where a professional guardian prevailed over DSHS on the issue of whether the guardian had neglected a vulnerable adult because the guardian did not place the incapacitated person in a facility. The court found the guardian was following the incapacitated person's wishes and could not place her against her will.

There are numerous other examples, but a final one will suffice. The movie guardian has numerous clients. In Washington, if a guardian has three or more clients for whom they charge fees, the guardian must be certified. Washington has a robust certification and disciplinary system through the Certified Professional Guardian Board. Our movie guardian would not fare well in Washington.

So, you do not need to worry that a guardian could put you in a secure facility and sell all of your belongings without notice and due process. But, to be safe, have a Durable Power of Attorney with at least one alternate agent. And, if a "movie guardian" appears at your door, call an attorney.



Expedited Licensure Regulations Approved Effective March 29, 2021.

**State of California
Office of Administrative Law**

In re:
Professional Fiduciaries Bureau

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections:

Amend sections: 4422

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

California Code of Regulations, Title 1,
Section 100

OAL Matter Number: 2020-1211-02

OAL Matter Type: Nonsubstantive (N)

This action by the Professional Fiduciaries Bureau proposes to add provisions for expedited review of applications pursuant to Business and Professions Code sections 115.4, 115.5, and 135.4.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: March 29, 2021

A handwritten signature in black ink, appearing to read "Kevin D. Hull".

Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Rebecca May, Bureau Chief
Copy: Angela Cuadra



Spring 2021 Newsletter

NONSUBSTANTIVE NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER 2020-1211-02N	REGULATORY ACTION NUMBER 2020-1211-02N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
2020 DEC 14 P 12:01 OFFICE OF ADMINISTRATIVE LAW			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Professional Fiduciaries Bureau			AGENCY FILE NUMBER (If any)

For use by Secretary of State only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 29 2021

2:30 pm

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE Notice re Proposed Regulatory Action	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE Approved as Submitted	Approved as Modified	Disapproved/ Withdrawn
			NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Expedited Licensure	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 4422		
TITLE(S) 16	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or <input type="checkbox"/> Effective on filing with <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____
<input type="checkbox"/> October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Secretary of State

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Angela Cuadra	TELEPHONE NUMBER (916) 574-7341	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Angela.Cuadra@dca.ca.gov
------------------------------------	------------------------------------	-----------------------	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 29 2021

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE Rebecca May	DATE 12.9.2020
---	-------------------

TYPED NAME AND TITLE OF SIGNATORY Rebecca May, Bureau Chief
--



Spring 2021 Newsletter

PROFESSIONAL FIDUCIARIES BUREAU

Expedited Licensure

Title 16, California Code of Regulations (CCR), Section 4422

Section 100 CHANGE WITHOUT REGULATORY EFFECT

Legend: Added text is indicated with an underline
 Omitted text is indicated by * * *

Amend Section 4422 of Article 2, Division 41, of Title 16, California Code of Regulations, to read as follows:

§ 4422. Application.

* * *

Note: Authority cited: Section 6517, Business and Professions Code.

Reference: Sections 115.4, 115.5, 135.4, 141, 480, 481, 490, 6533, 6534, 6536, 6538, 6539 and 6561, Business and Professions Code.



A Letter to The Honorable Chief Justice González



5727 Baker Way NW Suite 200
Gig Harbor WA 98332
Toll Free 1-877-460-5880
Fax 253-265-3043

March 8, 2021

The Honorable Chief Justice González
Supreme Court of Washington
PO Box 40929
Olympia, WA 98504

supreme@courts.wa.gov
steven.gonzalez@courts.wa.gov

Re: Certified Professional Guardianship Board

Dear Chief Justice González:

The Washington Association of Professional Guardians (WAPG) thanks the Supreme Court for their oversight of the Certified Professional Guardianship Board (CPG Board). WAPG's 131¹ members from 17 counties appreciate the critical work the CPG Board does overseeing professional guardians who serve some of the most at-risk people in Washington. We are writing to request a meeting with you (e.g., Zoom call) to discuss concerns related to operations of the CPG Board.

As you may know, the CPG Board was created by the Legislature in 1997². The Legislature's decision to create a certification process put Washington State in the vanguard of providing protection to a vulnerable population of Washington.

As an association of professional guardians and other related parties WAPG strives to maintain the highest level of professional guardian standards, including providing a forum for professional guardians which includes regular education and information seminars. In keeping with those goals WAPG lead the effort in 1997 to create the CPG Board. Everyone who testified for the bill (no one testified against it) was a representative or member of WAPG, with the exception of Ralph Monroe (who was Secretary of the State at the time).

As a result of the 1997 legislation, two AOC committees³ made recommendations, then the Supreme Court created General Rule 23, which "establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008...."⁴.

GR 23 states that meetings of the CPG Board should be open except for executive sessions, review panels, or disciplinary meetings. Although not defined in GR 23, in recent years, the CPG Board has used their executive sessions to deliberate and conduct significant board business. For example, in June 2020, they modified the training requirements for professional guardians during a closed-door executive session. In October 2020, they changed a fundamental certification criterion during a closed-door executive session.

¹ Washington has 271 Certified Professional Guardians. (<https://www.courts.wa.gov/guardianportal>)

² 1997 ESHB 1771

³ 1997 Guardianship Certification Study Committee – Chaired by Judge Paula Casey, Thurston County Superior Court, 1999 Professional Guardian Certification Oversight Board – Chaired by Justice Marywave Van Deren, Court of Appeals Div. II

⁴ GR 23 (a)



Spring 2021 Newsletter

March 8, 2021, C.J. González

WAPG is concerned about this practice of using executive sessions for ordinary Board business and “special session” meetings that occur with no notice or record. Our organization has previously brought these concerns about the content and frequency of closed-door executive sessions to the Supreme Court’s attention. See attached letters from August of 2020.

Through the use of public disclosure requests⁵, WAPG recently learned the CPG Board conducted two “special session” Board meetings in September 2020 and October 2020 that were held entirely outside of the public’s view and with no notice to the public of the meetings. A review of the records received shows the Board discussed proposed changes to GR 23, which directly impacts professional guardians, and voted on those changes—all without any public notice.

We are not the only ones who have this concern. Five former CPG Board Chairs and Vice Chairs wrote to the CPG Board in September 2020 with concerns that executive sessions should be used for very limited purposes as set forth in GR 23.⁶ In their letter, the former Board Members stated, “Simply put, closed-door Executive Session meetings were not, and should not, be used for discussions of the Board.”

The recent Supreme Court Case of *Beauregard v. WSBA* filed February 11, 2021, makes clear that some entities are subject to the Open Public Meetings Act (OPMA). The OPMA applies to each governing body of a public agency. Public agencies have been defined as any State board created by, or pursuant to statute, other than courts and the Legislature.⁷

The CPG Board was created by the Legislature in 1997 in ESHB 1771. GR 23 in its very first sentence sites to RCW 11.88.008. Based upon the *Beauregard* analysis, WAPG posits that the CPG Board is a public agency subject to the Open Public Meetings Act.

As mentioned above, prior Chairs and Vice Chairs of the CPG Board agree closed door executive sessions should be used sparingly. WAPG is very concerned (as disclosed by records released in our request) that entire meetings of the CPG Board have been held in private, outside the public view, when GR 23 itself makes explicit that except in certain circumstances meetings “will be open to the public”.

We trust this issue is of concern to you because of the very different practices of the Interpreter’s Commission, which you have chaired. WAPG respectfully requests the opportunity to discuss our concerns with you via a Zoom call. Please let us know your availability with a response to me at mcv@ohanafc.com.

Very truly yours,

Mark Vohr, President
Washington Association of
Professional Guardian

Enc.: August 2020 WAPG letter to Supreme Court and replies

⁵ See October 9, 2020 email from Stacey Johnson, Manager of Office of Guardianship and Elder Service.

⁶ See letter to the CPG Board dated September 2020

⁷ RCW 42.30.020(1)(a).



2021 Spring Virtual Conference via ZOOM Thursday, May 13, 2021

8:00 am - 3:00 pm
Agenda coming soon!
6 total credits

[REGISTER HERE](#)

Thank You to our Sponsors!

Platinum



Silver





Spring 2021 Newsletter

Follow Us on Social Media

facebook

twitter 



Instagram

LinkedIn 