

CPG Board Changes

Bill Jaback, CPG, CPA, was confirmed on 10/11/2010 as the newest member of the Certified Professional Guardian Board (CPGB). Bill Jaback is the executive director of Partners In Care, a CPG agency in Seattle, and brings over ten years of experience in guardianship to his new position. Mr. Jaback replaces John Jardine, CPG, who has served three terms on the CPGB and has reached his term limit. WAPG thanks Mr. Jardine for his many years of service on the CPGB, in particular for being one of the strongest voices for guardians on the Board. John Jardine drew upon his many, many years of experience providing guardianship services and running a guardianship agency to provide the CPGB with a true insider's perspective.

CPGB member Rhee Ah Bloedow of DSHS has resigned from the Board for health reasons recently. CPGB member Prof. Ruth Craven is also retiring from the Board after finishing her term. The CPGB is seeking nominations for a replacement for Ms. Craven's position, which is reserved for a non-CPG and a non-attorney/judge. The CPGB will likely be seeking somebody with a medical, social work, or related background. However, the position is technically open to anybody with an interest in or experience with guardianship. The CPGB has received only one application for Ms. Craven's position.

CPGB rules allow for only one third of the positions on the CPGB to be filled by CPGs, which means a maximum of four active CPGs may serve on the CPGB at one time. Because direct representation of CPGs on the CPGB is limited, it is in the best interest of CPGs to have as many CPGB members who are sympathetic to the needs of CPGs and understand the difficulty of the work performed by professional guardians. The WAPG Board is seeking recommendations from members for qualified individuals to be nominated to the CPGB. Ideally, a nominee for the CPGB would have some direct knowledge of or experience with guardianship, or at a minimum, have working experience with the populations that guardians typically work with (geriatric, developmentally disabled, chronically mentally ill, etc.).

Please send your recommendations to the WAPG Board via e-mail to gvoller_seattle@msn.com.

Comment Period for Proposed *Application Rule 117* Ends on October 18, 2010

WAPG members are reminded that the period to comment on proposed changes to Rule 117 concerning requirements for maintaining insurance and the consequences for failure to comply, expires on 10/18/2010. The proposed changes can be viewed at:

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=1298&committee_id=133.

Please e-mail your comments to Deborah Jameson at the Administrative Office of the Courts at: Deborah.Jameson@courts.wa.gov

We also encourage you to contact WAPG with any concerns about the proposed changes.

Mark Your Calendar!

WAPG Fall Training

Date: Wednesday, November 10, 2010

Place: Best Western Evergreen Inn and Suites

31124 25th Ave S, Federal Way, WA 98003

Lunch is included. More information & registration materials is to follow.

Training will include WAPG Special Meeting for WAPG Members Time of meeting TBA.

Resource of the Month

Updates

Online Medication Information

Ever wonder what your client's medications are being prescribed for or why the doctor made a change to the client's dosage? Googling the drug name often just leads you into a labyrinth of websites all trying to sell cheap heart medication or promising to cure erectile dysfunction.

The following websites are useful sources of basic information about prescription and over-the-counter medications, their indications, contraindications, side effects, usual dosages, chemical composition, and more. They also come with linked medical dictionaries and other interesting resources.

www.medicinenet.com

<http://www.rxlist.com/script/main/hp.asp>

Want to share your favorite resource? Submit it to fastcj@drizzle.com

The WAPG Newsletter
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The Washington Association of Professional Guardians is a 503(C) non-profit organization. WAPG is affiliated with the National Guardianship Association.

The contents of this newsletter do not necessarily represent the views of the Editors, the WAPG Executive Board, or the WAPG membership.

Submissions Guidelines: The Newsletter is published on the third Friday of each month. Article ideas should be discussed in advance with the editor. The deadline for submission is the first of the month. Late submissions will be considered on a space available basis. Submissions should be made in electronic format and emailed to fastcj@drizzle.com. All submissions are subject to editing.

Changes to UW Certificate Program

The University of Washington Certificate in Guardianship program will change from a six-month to a nine-month program following the academic year. The consensus was that students need more time to reflect on the material. An additional consideration was that holidays and summer break create scheduling difficulties for instructors and students. It appears that nobody wants to study or have class in December or during the summer months. Bill Anderson, Assistant Director for UW Professional and Continuing Education, said this change should attract about 45 students per year, and if there are enough students waiting to enter the program, then UW could add an additional, staggered nine-month program. The CPG Board provisionally has agreed to renew the UW contract to host the certificate program. The official vote to renew the contract will take place at the January 2011 CPG Board meeting.

WAPG Website Under Construction

Website users are reminded that the url "www.wapg.org" directs the user to WAPG's new website which is still under construction. The old website remains operational. Please scroll all the way to the bottom of the www.wapg.org homepage and click on the link marked "here" and your browser will be redirected to the old website.

WAPG Seeking New Treasurer

With his assumption of duties on the CPG Board, Bill Jaback has resigned from his position as Treasurer on the WAPG Board. WAPG is seeking letters of interest for the position of Treasurer. Please send inquiries to Glenda Voller at gvoller_seattle@msn.com.

Proposed Changes to RCW 11.88 and 11.92

The Washington State Bar Association Elder Law Section is proposing amendments to the guardianship statute sections RCW 11.88.095, 11.88.140, 11.92.040., 11.92.050, and 11.92.053, plus adding a new section to 11.88. The proposed new language arises from the recommendations of the Elder Law Section's Guardianship Task Force Report. The most significant proposed change is a statutory requirement for Letters of Guardianship to have an expiration date. The second major change is a new section to 11.88 providing standardized language and format for all Letters of Guardianship in the State of Washington.

At this time, not all counties require their Superior Court Clerk to place an expiration date on the Letters. Judges are finding that family guardian's often get appointed, and then the courts never see them again. Financial institutions would not cooperate with a guardian presenting expired Letters, which would presumably provide an incentive for family guardians to keep current with their reporting requirements.

Other changes proposed in this bill are less significant, but all directed at creating consistency in the statute with respect to reporting dates (anniversary of date of appointment), filing deadlines (90 days from anniversary of appointment), deadline for having a hearing on the

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View from the Trench

A monthly opinion column

THE LAMB CASE: A GUARDIAN'S VIEW

by James R. Hardman, J.D., C.P.G.

Sandy Lamb turned fifty four years old on July 19, 2010. She was normal at birth but contracted rubella at six months of age. She developed meningitis, right spastic hemiplegia, aphasia, and a seizure disorder. Prior to rubella she could hold a bottle, laugh, and recognize family members. After her illness she showed marked decrements in her motor and intellectual development. She began to talk at two years of age but stopped until she was five when she again began vocalizing. She never acquired language. She can say a few phrases, "more pop," "go for ride," "party tonight," which are repeated quickly several times. She calls familiar females "mommy" and familiar males "daddy". She is often loud due to profound hearing loss in one ear and limited hearing in the other. She will moderate her volume when requested.

Sandy is quite sociable. She is known widely on the Fircrest campus and well liked by all and loved by familiar staff. Her natural temperament is effervescent. Mood changes often signal an impending seizure. Her seizures are generally well controlled by medication. Her intellectual disability (MR) is in the profound range. People in this range do not acquire language. She does not understand abstract ideas. She recognizes simple directions especially in context. She will respond to "dinner" when it is time for dinner. She is routine oriented. She has freedom of the campus and goes independently to amuse herself in the coffee shop or on the central lawn (a bit smaller than a football field). She has indicated no interest in leaving the campus without staff. She likes to "go for ride". She is free to decline any activity and will occasionally skip work which she most often enjoys. Such refusals may signal discomfort, so staff monitor her and document the event. If she refuses work and meals, she will be examined by a nurse or doctor. For invasive exams and procedures she requires pre-sedation. She does not comprehend the need for medical or dental treatment. She has a swallowing disorder (dysphagia) so requires a texture modified diet.

Sandy is a pleasant likable person with great challenges. She looks at the world as a two year old. She has no traffic awareness and would have little caution with strangers.

In 2004, DSHS relocated her to Rainier School in a "downsizing" effort. This was not done for therapeutic reasons. She was unable to be briefed about DSHS plans, because she lacked the intellectual capacity to comprehend the concept of relocating. She was placed in a duplex similar to her Fircrest home but with no one she knew. All her peers (non-staff) at Rainier were more able than she. All staff were strangers. All her familiar people, peers and staff, were suddenly gone. She began exhibiting maladaptive behaviors. She destroyed property in her new "home." She indulged in self-injurious behaviors (SIBs). She quit laughing. She quit smiling. She lost significant weight. She often occupied herself with tossing red garden rocks onto the lawn, the lawn turned from green to red. Sandy was miserable. She self-isolated in her bedroom. She turned over furniture. She tried "eloping" from Rainier, and was found on the road just off campus and returned by staff.

DSHS had made sure that her medications and programs were replicated at Rainier. And Rainier has very fine staff, both care staff and professional staff. But DSHS refuses to acknowledge that those who live in Residential Habilitation Centers (RHCs) can experience trauma when relocated. DSHS will acknowledge transfer trauma as a reason to limit relocations from group homes. Professional studies indicate that moving is high on the list of stress producers. Abandonment by loved ones is also stressful. Some describe reactions such as Sandy's as Post Traumatic Stress Disorder (PTSD). A DSHS psychologist also describes "Generalization Stimulus Decrement" where a stressful event will trigger a regression to previous maladaptive behaviors, which can continue even after the stress is relieved.

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WAPG invites you to get involved!

Is there a topic of particular concern that you would like to do something about? Join the WAPG committee handling the issue. Go to www.wapg.org to find the contact info for the committee chair(s). Is there no committee handling that issue? Contact Scott Malavotte (425-883-1181 or mal.assoc@verizon.net) or Michael L. Johnson (206-623-3030 or hardmanjohnson@gmail.com) to start your own committee.

WAPG Hosts Teleconference with CPG Board Member Chris Neil

On Thursday, October 7, 2010, WAPG hosted its latest, in a series of quarterly telephone conference calls for WAPG members. All WAPG members can participate in their periodic telephone conference call for free. The purpose for the call is for CPGs to discuss topics of interest. The conference calls generally occur over the lunch hour and last for one hour.

The guest on this call was Chris Neil. Mr. Neil is an Attorney, CPG, WAPG member, and a Board Member on the Certified Professional Guardian Board (CPGB). Mr. Neil spoke on his own behalf, not for his law firm, guardianship agency, or the CPGB.

11 WAPG members participated in the teleconference.

Chris Neil provided updates on current and emerging issues related to the CPG Board. He provided an overview with detailed examples of proposed new regulations regarding a CPG's form of business. The full text of the regulation is posted for comment at:

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=1304&committee_id=133.

There was a discussion about how the new regulation could prohibit any CPG from taking an appointment as guardian, conducting guardianship business as, or representing oneself with regard to a guardianship with any name other than the individual CPG's actual name or the Certified Professional Guardian Agency (CPGA) registered name.

This change, if approved as now drafted, would prohibit the practice of CPGs conducting business under the name of their fiduciary company, LLC, corporation, or "DBA" name, if that entity is not a CPG Agency. The exception is sole proprietor companies, which include the full name of the guardian. Neil illustrated with the following fictitious company names: "Chris Neil Services" (allowed) and "C. Neil Services" (not allowed).

The CPGB is proposing these regulation changes to eliminate the confusion created by individuals and agencies conducting business under various DBA names and entities. The change is also intended to create greater transparency and to prevent individual guardians who have been decertified from being appointed (with or without certification) in the future by using an entity name to mask their identity.

Neil facilitated a discussion on the CPGB's proposal for new Standards of Practice (SOPs) which are based in part on the National Guardianship Association (NGA) standards. The NGA's SOPs are aspirational standards. The discussion focused on how these new standards (if adopted) will now become minimums, (not aspirational) thus eliminating flexibility and discretion in individual cases where circumstances may call for the guardian to provide more or less than what is proscribed by the relevant SOP.

The lively teleconference discussion focused on the potential for being disciplined by the CPGB for not providing the minimum service per the SOP, (e.g., frequency of in-person contacts with client,) even when the circumstances of that case dictate a lower level of service is appropriate.

The discussion amongst the guardians made clear that making the SOPs into a mandate for minimal standards will result in an increase of guardian activity, some of which will be aimed more at covering the guardian's liability than providing meaningful and necessary services to the Incapacitated Person. This will, of course, lead to an increase in guardianship fees and costs, which conflicts with the SOP requiring the CPG to not unnecessarily exhaust the guardianship estate.

Chris Neil discussed his recent experiences with fees in Medicaid guardianship cases. He urged anyone working in a Medicaid case to be very familiar with the Administrative Code sections that control the payment of fees. There continues to be the myth that DSHS sets the fees. However, a careful reading of the WAC 388-79-050 makes clear that it is the court, not DSHS that determines the fees. Mr. Neil cautioned that Guardians should not be lured into thinking that the "ordinary/extraordinary" analysis is necessary. In his opinion, that "ordinary/extraordinary" standard is for DSHS internal use only. The WAC makes no mention of that standard when the court determines which fees are reasonable for payment. Mr. Neil also discussed strategies that guardians could use to keep their unpaid fees balances in control so guardian are not left with unpaid fees if the client should unexpectedly die.

Feedback from teleconference participants was very positive. They found Chris Neil's information and the discussions they inspired very informative.

Stay tuned for the next teleconference.

Lamb

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Removing Sandy from Fircrest, where she had lived for more than forty years, was like taking a two-year old from her family and expecting her to be okay because the "new" family is a good family as well. We wouldn't tolerate this with "actual" two year olds, but because Sandy occupies a fifty-year old body the outrage is very limited. Intellectually and emotionally Sandy is a two-year old and her suffering reflected that fact.

Sandy sued DSHS (through her guardians) under the Abuse of Vulnerable Adults Act. Her pretrial settlement was in excess of \$100,000.00. Four others also relocated from Fircrest to Rainier also sued and settled. An order preventing the relocations in King County Superior Court was signed by one judge, and overruled by another who indicated residents should "get married, go to the movies, and have pets." While one should not disparage Sandy's abilities, and in fact her entire treatment is based on reinforcing them all, creating imaginary abilities creates a significant risk of harm. While Fircrest residents can and do go to movies, attributing capabilities regarding pets and marriage reflect an imaginary Fircrest population. I know of four such relocated people who died very quickly. Staff tell me the number is six. Many others were seriously harmed but did not litigate. Five out of five of my clients suffered. Three of the five suffered very significantly. Each of the three received a settlement like Sandy.

So how did all this suffering come to be? The Court of Appeals found DSHS could relocate residents without legislative approval. The Legislature directed a study and a report on downsizing Fircrest. DSHS went beyond that directive, closed Fircrest living units, and relocated the residents elsewhere. (The closed units were quickly reopened with 'new' residents.) One prominent disabilities rights advocacy group supported the DSHS effort.

Of those with "mental retardation" (now often referred to as intellectual disability), 80% have mild, 17% have moderate, and 3% have profound or severe retardation. Most of those at Fircrest are in the 3%. Those at Fircrest with greater mental ability have at least one significant co-occurring disability such as mental illness or an emotional disability. As indicated above, Sandy has several significant co-occurring disabilities.

When Sandy was returned to Fircrest some magic happened. Her mood immediately improved.

Her maladaptive behaviors resolved. She became joyful again. Her life can still have ups and downs. At Rainier she was down in an unrelenting manner. That despair vanished with her return to the Fircrest campus.

So what's the point? Prevention is way better than money damages. How to void the suffering? RHC decision-making is governmental. State operated RHCs are constitutionally recognized facilities in the state constitution. Article XIII requires the State to "support" and "foster" such facilities. State law makes the five existing RHCs "permanent". However, the constitution can be ignored and state law changed. Within the current framework, DSHS, however well-intentioned, can do some mean stuff.

RHCs house and serve about 1,000 individuals statewide. That is a very small number among 6.6 million people. The RHC residents are not commonly seen out and about. Some have disabilities that prevent safe off campus activities. Staffing has never been generous and is less than bare bones currently due to budget deficiencies. Off-campus outings are reduced in scope, though some such are federally mandated.

Sandy cannot speak for herself. She cannot fathom a political process. She doesn't know her own care needs or how to get them. She cannot petition the government about her rights and her situation. She cannot complain to DSHS or the Governor. That's why she has a court appointed guardian. Legislators quit and others get elected. There is a new group at every session. If they are not educated about Sandy, she and others very much like her may be harmed again. Even those who have toured an RHC in the past must be reminded and encouraged to tour again. Most find tours eye opening. More than one has commented about the disconnect between what they were told about Fircrest and what it is really like. Experts advise grass roots lobbying and education to protect RHC residents.

The dynamics of advocacy for RHC residents startled me when I learned of it almost ten years ago. The focus on "bricks and mortar" and the horrors of the past is a great fund-raising tool for advocacy groups who have effectively turned the 97% against the 3%. Those advocating against RHCs and for the eviction of current RHC residents are well-funded to lobby and organize. DSHS employees do not advance unless they demonstrate an anti-RHC bias. This has been true for decades and the result is an administration keen to close the RHCs. No one is forced into an RHC and no one is forced to stay there. Those wishing to leave have only to

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indicate such a desire and DSHS will see that they are accommodated. I've participated in that process.

Friends of Fircrest was told by a visiting anti-RHC advocate that a few deaths were a reasonable price to pay for closing RHCs. I don't agree. I would hope that no professional guardian would agree that a client take on such a risk to serve an ideology or other non-therapeutic purposes. I could easily go on but I've probably gone beyond the endurance of those who don't have clients living in RHCs. I'm available by phone or online for those with interest in these issues.

Jim Hardman, an attorney for over 30 years, has been a practicing full-time CPG since 2001. He can be reached at 206-367-6116 or by email at aguak9@aol.com.

Legislative Update

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report (120 days), and expiration date for Letters of Guardianship (also 120 days). The period for the filing of the guardian's final report and accounting would change from 30 to 60 days under this proposal. A copy of the proposed bill is posted alongside this newsletter at www.wapg.org.

WAPG urges members to review the legislation carefully and pass comments along to WAPG Co-President and Legislative Committee member, Michael Johnson at hardmanjohnson@gmail.com. The WAPG Legislative Committee has reviewed the legislation, and WAPG is now a working member of the Guardianship Task Force reviewing the legislation in Olympia. Please note that comments must be sent to Michael Johnson by **October 16, 2010**.

Certified Professional Guardian Board 2011 Meeting Calendar

Date	Place	Time
Monday, January 10	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, February 14	Teleconference	8:00 – 9:30 am
Monday, March 14	Teleconference	8:00 – 9:30 am
Friday-Saturday, April 8-9 or Monday, April 11	TBD or AOC SeaTac Facility	
Monday, May 9	Teleconference	8:00 – 9:30 am
Monday, June 13	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, July 11	Teleconference	8:00 – 9:30 am
Monday, August 8 (tentative)	Teleconference	8:00 – 9:30 am
Monday, September 12	Teleconference	8:00 – 9:30 am
Monday, October 10	AOC SeaTac Facility	9:00 – 1:00 pm
Monday, November 14	Teleconference	8:00 – 9:30 am
Monday, December 12 (tentative)	Teleconference	8:00 – 9:30 am

The AOC SeaTac Facility is located at:
SeaTac Office Center
18000 International Boulevard
South Tower, Suite 1106
SeaTac, WA 98188