

**Guardianship Certification Board
Board Meeting
October 26, 2007
11:00 a.m.
Office of Court Administration
205 W. 14th St., 6th Floor, Austin, Texas**

REVISED AGENDA

- I. Roll Call
- II. Minutes of July 27, 2007 Meeting
- III. Directors' Reports
- IV. Review of Applications for Certification
- V. Enforcement of Certification Requirements
- VI. Policies and Rules
 - A. Proposed Division of Responsibilities Policy
 - B. Proposed Access to Board Records Policy
 - C. Proposed Amendment of Public Meetings Policy
 - D. Proposed Amendment of Rule IX(a), Grounds for Denial of Certification
 - E. Proposed Alternative Dispute Resolution Rules
- VII. Exam Schedule for 2008
- VIII. Committee Assignments
- IX. Public Comment
- X. Schedule for Future Meetings

The Board may meet in closed session on any agenda item listed, in accordance with the Board's Public Meetings Policy.

II.

Minutes of July 27 Meeting

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

July 27, 2007
11:00 a.m.

Office of Court Administration
205 W. 14th St., Suite 605
Austin, Texas

COMMENCEMENT OF MEETING

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on June 5, 2007 at 11:10 a.m. The meeting was held at the Office of Court Administration in Austin, Texas. Notice of this meeting was posted on the GCB's website and distributed to interested persons in accordance with the GCB's public meetings policy.

ATTENDANCE OF MEMBERS

Meredith Musick, Executive Assistant at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair
Leah Cohen, Vice-Chair
Jason Armstrong
Garth Corbett
Dr. Raymond Costello
Carol Patrice Dabner
Susan Eason
Don D. Ford
Marlane Meyer
Gina Patterson
Kathy Strong
Robert Warach

Dr. Raymond Costello, Gina Patterson and Kathy Strong attended via telephone conference call. Phillip A. Grant, Janis Thompson and Patti Turner did not participate. Others present were Carl Reynolds, Administrative Director; Lesley Ondrechen, Director of the Guardianship Certification Program; Katie Bond, Assistant General Counsel, and Meredith Musick, Executive Assistant, all of the OCA. Members of the public present at the meeting were Tim McGinnis, Barbara Scobey, Leslie Brannon and Ron Turpin, all of the Texas Department of Aging and Disability Services (DADS).

MINUTES OF MEETINGS

November 13, 2006. Upon motion and second, the minutes were approved as submitted.

January 19, 2007. Upon motion and second, the minutes were approved as submitted.

February 27, 2007. Susan Eason was mistakenly identified as a member of the Rules Committee; Carol Patrice Dabner serves on the Rules Committee and the Provisional Certification Subcommittee. Upon motion and second, the minutes were approved as corrected.

April 16, 2007. Upon motion and second, the minutes were approved, pending verification of Mr. Warach's attendance.

May 18, 2007. Upon motion and second, the minutes were approved as submitted.

June 5, 2007. Upon motion and second, the minutes were approved as submitted.

DIRECTORS' REPORTS

Mr. Reynolds did not have any items to report to the Board.

Ms. Ondrechen reported that as of July 26, 2007, 59 guardians have been certified, and 15 applications are pending. As of July 27, seven guardians have been provisionally certified, and five applications are pending. She noted that two applicants for provisional certification took the national and the Texas exams on July 20, and both failed the national portion and passed the Texas. She reported on the status of applications for DADS and the Harris County Guardianship Program.

Ms. Ondrechen advised the Board of the results of the exams given in Houston on May 18. She directed the Board to a memo provided by Sally Hurme on behalf of the Center for Guardianship Certification for results of the June 11, June 29 and July 20 exams. The Board discussed the failure rate for the exams and possible reasons for it. The Chair asked for information on which version of the test was given on which date; Ms. Ondrechen will contact the Center for Guardianship Certification and report to the Board. Ms. Ondrechen noted the next exam will be given during the National Guardianship Association's Annual Conference in San Antonio, on October 6 and she will attend the conference. She reported on other training and meetings she will be attending and presenting in the next three months.

Ms. Ondrechen addressed several administrative matters, including the preparation of a business continuing plan for the Board, policies to be drafted, forms and procedures to be developed, and updates to the Board's website.

Judge Burwell told the Board that she had reviewed her probate files and identified guardians whom she believed were required to be certified. She said judges who handle probate matters should be advised when a list of certified guardians is available on the website. Ms. Ondrechen will send a letter to these judges the first week of August reminding them of the September 1 deadline. A second letter will be sent the second week in September requesting judges to review the list and verify any guardians who are required to be certified are on the list.

A question was raised concerning what will happen if a person is in the middle of administering a guardianship estate, and is not certified on September 1. The Chair stated that the statute requires that person be removed. Another question was raised whether a program was required

to have at least one certified guardian when a program is staffed by volunteers. Ms. Bond will research this and report to the Board.

CONSIDERATION OF APPLICATIONS FOR CERTIFICATION

The Chair directed the Board's attention to the documents provided by Ms. Ondrechen. Ms. Ondrechen explained that while the Board is not bound by the provisions of Occupations Code Chapter 53, it can be used as a guideline.

The Board went into closed session at 11:45 a.m. to discuss agenda item IV - Consideration of Applications for Certification, in accordance with sections 7(f) of its Public Meetings Policy. No vote was taken during closed session. The Board reconvened in public session at 12:06 p.m.

A motion was made to approve certification of Leslie Brannon and Ron Turpin. Upon second, a vote was taken and the motion carried.

Ms. Ondrechen requested the Board to approve a waiver for a secure name search if the FBI is unable to process fingerprints a second time for Jesusa Thoman. Upon verification that the fingerprints were rejected twice, there is no charge to the applicant or to the Board for an FBI secure name search. Upon motion and second, the Board approved the waiver.

The Board discussed Esther Williams' application for certification. A motion was made and seconded to deny Ms. Williams certification based on lack of experience, but to recommend she apply for provisional certification. The motion carried with one dissenting vote.

The Board recessed at 12:26 p.m. and reconvened at 1:00 p.m.

TRAVEL REIMBURSEMENT

Glenna Bowman, Chief Financial Officer for the OCA, reviewed forms and procedures for Board members to claim reimbursement for their travel to meetings as of September 1, 2007. She introduced OCA's travel coordinator, Julie Flanders. Ms. Ondrechen will send the forms and contact information for Ms. Bowman and Ms. Flanders to the Board electronically.

CRIMINAL HISTORY REPORTS

Ms. Ondrechen reminded the Board that Government Code Chapter 411.1406(c)(3), enacted effective April 25, 2007, provides that criminal history reports received by the Board must be destroyed after the information is used for its authorized purpose. Ms. Ondrechen recommended that electronic records be permanently deleted and paper copies shredded once an applicant has been granted certification. Criminal history reports will be retained so long as any matter for a particular applicant is pending before the Board. On motion and second, the Board adopted the recommended procedures.

Ms. Ondrechen asked the Board for guidance in processing applications where it is not clear whether an applicant qualifies, particularly when an applicant has a criminal history. After

discussion, a motion was made to form an Application Review Committee, composed of at least three Board members, and delegate to that Committee the authority to review and make decisions on applications where applicants' qualifications are questioned by Board staff. The motion was amended to provide that the committee will meet at the call of the program director, and the members will serve for six months at a time on a rotating basis. Upon second, a vote was taken and the amended motion carried.

The Committee may refer the matter to the full Board if it does not reach a decision, and applicants may appeal denials by the Committee. Judge Burwell, Ms. Cohen and Ms. Eason will serve on the Committee from now until December 31, 2007. Ms. Ondrechen will arrange with OCA's IT staff for a secure portal to allow Committee members to view confidential documents.

MEMBERS' ABSENCE FROM BOARD MEETINGS

Ms. Ondrechen told the Board that Government Code 111.015 states that it is grounds for removal from the Board if a member misses half of the regularly scheduled meetings in calendar year, unless an excuse is approved by a majority of the Board. The statute also requires the director to notify the chair if she becomes aware of a potential ground for removal. Ms. Ondrechen will keep track of members' attendance from this point forward, and will inform the Chair if a problem arises.

ALTERNATIVE DISPUTE RESOLUTION (ADR) POLICY

Ms. Bond reminded the Board that pursuant to Government Code Section 111.019, she had drafted a proposed ADR policy, and Board members had certain concerns about the proposal. She recommended a rule change, rather than a policy, to address this statutory requirement, noting that a policy cannot be enforced. Ms. Bond will draft a proposed rule and present it to the Board at its next regularly scheduled meeting.

CONTINUING EDUCATION

Ms. Ondrechen proposed the possibility of eliminating the requirement for applicants for re-certification to provide documentation of continuing education. After discussion, the Board's consensus was to make no change to the documentation requirement. A form similar to that used by the Paralegal Division of the State Bar of Texas to list continuing education courses taken will be developed for use as part of the application for re-certification.

Ms. Ondrechen discussed approval of continuing education for participation in the Texas Guardianship Association's spring conference, which took place in April 2007, and the National Guardianship Association's annual conference in October. The rules state that continuing education must be earned during the certification period; therefore, credit will not be approved for any class, conference, training, seminar, etc. attended before a guardian's certification date. Hours will be approved for the NGA conference and will be posted to the Board's website.

The Chair mentioned that she was providing Ms. Ondrechen with the agenda for the Texas College of Probate Judges. She also noted that the 9th Annual Estate Planning, Guardianship

and Elder Law Conference, sponsored by the University of Texas School of Law Continuing Legal Education department, is taking place in Galveston August 9-10. The director will review the materials for consideration of approval of continuing education credit for certified guardians who attend this conference. Authority to approve courses for continuing education has been delegated to the program director by the Board. The Chair asked Board members to inform Ms. Ondrechen of any continuing education opportunities of which they are aware.

Ms. Ondrechen offered some suggestions on how the Board could provide continuing education, should it decide to do so. The Board discussed whether its role is to facilitate or provide continuing education. The Chair proposed that the Board should find and make information available on training available from other entities before trying to offer it, and the Board concurred.

FUTURE AMENDMENTS TO RULES

Ms. Bond informed the Board that Rule XIV(g), providing that a provisionally certified guardian who obtains full certification within one year does not have to submit a new criminal history, was inadvertently not submitted for approval to the Supreme Court of Texas with other recent rule changes. She will submit it to the Court. No other rules need to be submitted at this point.

COMMITTEE ASSIGNMENTS

Members were assigned to the Application Review Committee during the course of the meeting. No other committee assignments are needed at this time.

PUBLIC COMMENT

In response to a question from a Board member, Mr. McGinnis stated that DADS does not have plans at this time open its training sessions to the general public; Board members are welcome to attend. DADS may consider video-taping some of its training and making it available on the internet.

FUTURE BOARD MEETINGS

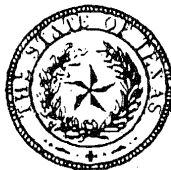
The next Board meeting is scheduled for Friday, October 26, 2007 beginning at 11:00 a.m. It will be held in the Office of Court Administration's offices in Austin. The Board will consider scheduling its meetings for calendar year 2008 at that meeting.

ADJOURNMENT

On motion and second, the meeting was adjourned at 2:36 p.m.

V.

Enforcement of Certification Requirements



DON R. WINDLE, JUDGE
JERRY D. PARR
ASSOCIATE JUDGE
PROBATE COURT
DENTON COUNTY, TEXAS

(940) 349-2140 Judge
 (940) 349-2155 Associate Judge
 (940) 349-2142 Official Reporter
 (940) 349-2152 Deputy Reporter
 (940) 349-2147 Atty/Auditor
 (940) 349-2148 Investigator
 (940) 349-2140 Administrator
 (940) 349-2048 Mental Health
 (940) 349-2141 Court Fax
 (940) 349-2017 MH Fax

Court Clerks
 (940) 349-2037 Supervisor
 (940) 349-2038

Second Floor
 1450 E. McKinney
 Suite 2412
 Denton, Texas 76209-4524

To: Texas Guardianship Certification Board
 Attn: Lesley Martin Ondrechen
 P.O. Box 12066
 Austin, Texas 78711-2066

Date: October 12, 2007

RE: Certification of Certain Guardians

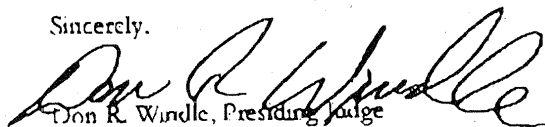
Dear Ms. Ondrechen,

We are in receipt of your correspondence relating to the Certification of Certain Guardians under the new Texas Probate Code Provisions. We are hereby advising that we have only one locally based guardianship program which is the program that contracts with Denton County for indigent Ward services. Said program has materials filed with the Guardianship Certification Board presently and we are awaiting action; the name of our program is Health Services of North Texas. Also, we do have some cases with Guardianship Services of Tarrant County, but they are on referral to our local guardianship program and in the process of transition. We are anticipating receipt of verifications of criminal history checks completed in Tarrant County for filing with our Court this month. Further, we have also received the necessary documents from the Texas Department of Aging and Disability Services which serves Wards in our Court in cases where our local program is unable to do so.

As far as we are aware there are only two Certified Public Accountants, Roy Anderson and Leroy Howe, who are serving in fiduciary roles as Guardian of the Estate in our Court; neither of them serves as Guardian of the Person. It is our understanding they both will be completing and closing out the cases on which they currently serve and have chosen not to certify or further be available to serve as guardians in future cases. We know of no problems in these cases and both Mr. Howe and Mr. Anderson are adequately bonded with corporate surety bonds in all matters and to the best of our knowledge each of them carries substantial professional liability insurance. Mr. Anderson currently serves in three (3) guardianship cases which are in stages of closing. Mr. Howe serves in three (3) guardianship cases which are also in the closing process.

In these six cases (6) cases most of the actions to liquidate property to pay pending bills or transition to Section 867 management trusts are underway but require one or more actions to complete and finalize. A change in Guardians would result in additional expense and delay. Accordingly, it appears in the best interests of these Wards at this time to allow these two CPAs to complete these existing cases despite their intention to discontinue as court appointed fiduciaries in guardianship and corresponding intention not to participate in certification process. Our file review indicates to us that all other guardianships are with family members, volunteers, attorneys, or altruistic experts.

Sincerely,


 Don R. Windle, Presiding Judge
 Denton County Probate Court

VI.

Policies and Rules

Guardianship Certification Board
Division of Responsibilities Policy
(Effective _____, 2007)

1. **Policy.** The purpose of this policy is to distinguish the policy making responsibilities of the Board and the management responsibilities of the Director, as required by Government Code § 111.022.

2. **Definitions.**

- a. "Board" means the Guardianship Certification Board established in Chapter 111, Government Code, and includes a duly-established official committee of the Board.
- b. "Director" means the Guardianship Certification Program Director as defined in Government Code § 111.021. The Director is an employee of the Office of Court Administration, to which the Board is administratively attached, and serves as staff for the Board.
- c. "Policies" means policies duly adopted by the Board.
- d. "Rules" means the Rules Governing Guardianship Certification, as amended.
- e. "Standards" means the Minimum Standards for Guardianship Services, as amended.
- f. "Supreme Court" means the Supreme Court of Texas.

3. **Responsibilities of the Board.**

The Board must carry out the purposes of Government Code Chapter 111, and administer and enforce that chapter. Government Code § 111.016 sets forth specific powers and duties of the Board:

- develop and recommend rules and procedures for adoption by the Supreme Court;
- set fees, subject to approval by the Supreme Court;
- establish qualifications for certification, re-certification and provisional certification;
- determine if applicants meet the qualifications for certification, re-certification and provisional certification;
- issue certificates to qualified applicants;
- record certificates issued, renewed, suspended and revoked
- appoint necessary and proper committees; and
- record Board proceedings.

The Board shall also perform any other duty required by Government Code Chapter 111 or other law.

4. Responsibilities of the Director.

The Director administers policies, rules and standards set by the Board. The Director is responsible for carrying out the daily business of the Board and performing the necessary administrative functions to implement and enforce statutory requirements, as follows:

- develops procedures and forms
- documents policies and procedures
- disseminates information on the Board's policies and rules;
- processes applications for certification, re-certification and provisional certification in accordance with Board guidelines;
- keeps the records pertaining to applicants and certified and provisionally-certified guardians, including certificates issued and disciplinary actions taken;
- staffs and keeps the record of Board meetings and prepares minutes for the Board's review and approval;
- brings items to the Board's attention for its consideration, including, but not limited to, proposals for new or amended Rules and agenda items for Board and Committee meetings; and
- performs other duties as necessary or as delegated by the Board.

Guardianship Certification Board
Access to Board Records Policy
(Effective _____, 2007)

1. **Policy.** The purpose of this policy is to explain the rules and procedures that govern public access to the records and information maintained by the Guardianship Certification Board.

2. **Definitions.**
 - a. “Applicant” means any person applying for certification or provisional certification by the Board.
 - b. “Board” means the Guardianship Certification Board established in Chapter 111, Government Code, and includes a duly-established official committee of the Board.
 - c. “Certified guardian” means a person who has been certified by the Board according to its rules and applicable statutes.
 - d. “Director” means the Guardianship Certification Program Director as defined in Government Code § 111.021. The Director is an employee of the Office of Court Administration, to which the Board is administratively attached under Government Code § 111.012, and serves as staff for the Board.
 - e. “Provisionally certified guardian” means a person who has been certified by the Board according to its rules and applicable statutes, and may provide guardianship services only under the supervision of a certified guardian supervisor.
 - f. “Rule 12” means Rule 12 of the Texas Rules of Judicial Administration.

3. **Access to Board’s Records**

As a judicial branch entity, the Board is not a governmental body subject to the Public Information Act, Government Code Chapter 552. Rather, public access to its records is governed by Rule 12, and the Director is its records custodian. The Board’s policy is to provide public access to Board information to the fullest extent allowed by law.

4. **Scope**

All records made or maintained by or for the Board and its staff in the regular course of business are judicial records subject to Rule 12. This includes, but is not limited to, information provided by applicants during the certification process; records provided to the Board related to a complaint against a certified guardian or a provisionally certified guardian; and minutes and recordings of Board meetings, including meetings of duly appointed committees. This does not include records or information excluded by Rule 12.3 or exempted by Rule 12.5.

DRAFT

PROPOSED - 10/26/07

5. **Personal Information Exempt from Disclosure**

Rule 12.5 provides that certain information is exempt from disclosure. In particular, Rule 12.5(d) prohibits the disclosure of “Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.”

6. **Criminal History Information**

Rules VI(g) and XIV(b) of the Board’s rules require each applicant for certification or provisional certification to provide to the Board his or her national and Texas criminal history records, by means of a fingerprint search. In accordance with Government Code § 411.1406 and Board procedures, criminal history reports are not maintained as part of the applicant’s file once certification or provisional certification is granted.

7. **Non-Disclosure of Confidential Information**

The Director will not release any information or record that is confidential or exempt from disclosure under Rule 12, a state or federal constitutional provision, statute, or common law.

**Guardianship Certification Board
Public Meetings Policy
(Effective _____)**

1. **Policy.** The purpose of this policy is to provide for notice and public access to meetings of the Guardianship Certification Board, a judicial branch entity.

2. **Definitions.**

(a) "Closed meeting" means a meeting to which the public does not have access.

(b) "Deliberation" means an oral or written verbal exchange during a meeting.

(c) "GCB" means the Guardianship Certification Board established in Chapter 111, Government Code, and includes a duly-established official committee of the GCB.

(d) "Meeting" means:

(1) a deliberation among members constituting a quorum, or between a quorum and another person, during which public business or public policy over which the GCB has supervision or control is discussed or considered or during which the GCB takes formal action; or

(2) except as otherwise provided in Section 2(d)(3), a gathering:

(A) that is conducted by the GCB or for which the GCB is responsible;

(B) at which a quorum is present;

(C) that has been called by the GCB; and

(D) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the GCB, about the public business or public policy over which the GCB has supervision or control.

(3) "Meeting" does not include:

(A) the gathering of a quorum at a social function unrelated to the public business of the GCB, or the attendance by a quorum at a regional, state, or national convention or workshop, if formal action is not taken and any discussion of public business is incidental to the social function, convention, or workshop;

(B) the attendance by a quorum at a meeting of a committee or agency of the legislature if the deliberations at the meeting by the members of that GCB consist only of publicly testifying at the meeting, publicly commenting at the meeting, and publicly responding at the meeting to a question asked by a member of the legislative committee or agency; or

(C) the attendance by a quorum at a judicial hearing or proceeding unrelated to the public business of the GCB, if formal action is not taken and any discussion of GCB business is incidental.

(e) "Open" means open to the public.

(f) "Quorum" means a majority of the formally-appointed members of the GCB.

3. Public Meetings Requirement.

(a) Every meeting of the GCB or a committee of the GCB shall be open to the public, except as provided by this policy. This requirement precludes deliberation through written communication, including electronic mail. This requirement does not preclude the use of telephone or video teleconferencing equipment, provided that at least one location shall be open to the public and posted in accordance with Section 6.

(b) At each meeting, the GCB will give members of the public the opportunity to appear and speak about issues within the jurisdiction of the GCB. The chair of the GCB may set reasonable limits on presentations by members of the public, including limits on the number, frequency, and length of presentations.

4. **Minutes or Recordings.** The GCB shall prepare and keep minutes or make an audio recording of each meeting, except that consultations with an attorney in a session closed pursuant to Section 7 may not be recorded. The minutes of a public meeting are judicial records under Rule 12 of the Rules of Judicial Administration and shall be available for public inspection and copying.

5. Recording of a Meeting by a Person in Attendance.

(a) A person in attendance may record all or any part of a public meeting of the GCB by means of a tape recorder, video camera, or other means of aural or visual reproduction.

(b) The chair of the GCB may adopt reasonable policies to maintain order at a meeting, including policies relating to:

- (1) the location of recording equipment; and
- (2) the manner in which the recording is conducted.

(c) A policy adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

6. Meeting Notice Required.

(a) The GCB shall post on its website written notice of the date, hour, place, and subject of each GCB meeting for at least 72 hours before the scheduled time of the meeting.

(b) The GCB shall maintain an e-mail distribution list of persons requesting notice of GCB meetings and shall provide e-mail notification of the date, hour, place and subject of each meeting to the distribution list at least 72 hours before the scheduled time of the meeting.

(c) If the GCB posts notice of a meeting and then is unable to attain a quorum, the members present may discuss and deliberate GCB matters, but shall not vote or otherwise take formal action.

(d) In an emergency, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this policy is sufficient if it is posted for at least two hours before the meeting is convened. The emergency must be reasonably unforeseeable, and the GCB shall clearly identify the emergency in the notice.

7. Exceptions to Requirement that Meetings Be Open. The GCB may conduct a closed meeting to:

(a) consult with its attorney:

(1) when the GCB seeks the advice of its attorney about:

(A) pending or contemplated litigation; or

(B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this policy;

(b) deliberate a negotiated contract or a prospective gift or donation to the GCB if deliberation in an open meeting would have a detrimental effect on the position of the GCB in negotiations with a third person;

(c) deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, or to hear a complaint or charge against an officer or employee;

(d) deliberate the deployment, or specific occasions for implementation, of security personnel or devices;

(e) deliberate a test item or information related to a test item if the GCB believes that the test item may be included in a test the GCB administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity; or

(f) deliberate information regarding an applicant for certification or the subject of a complaint to the GCB that would be confidential under law or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

8. Investigation. The GCB, when investigating a matter, may exclude a witness from a hearing during the examination of another witness in the investigation.

PROPOSED AMENDMENT TO RULE XI(a)

XI. DISCIPLINARY CRITERIA

(a) The Board may deny, suspend or revoke certification or provisional certification, or impose other disciplinary action, if the applicant, certified guardian, or provisionally-certified guardian has:

- 1) Failed to comply with any of these rules;
- 2) Failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;
- 3) Failed to pay any applicable fee established by the Board;
- 4) Failed to meet the requirements for certification, provisional certification, or re-certification established by the Board;
- 5) Made any false representations or misstatements of material fact to the Board;
- ~~5)6)~~ Been adjudged guilty of or entered a plea of no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in sections 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly individual, or disabled individual), 22.041 (abandoning or endangering a child), 22.07 (deadly conduct), 22.08 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code;
- ~~6)7)~~ Been found civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.
- ~~7)8)~~ Been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion.
- ~~8)9)~~ Been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party.
- ~~9)10)~~ Failed to notify the Board of a violation of any of the provisions set forth in subsections (e) and (f) of Section VI (relating to Requirements for Certification).
- ~~10)11)~~ Engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.

(b) The Board may suspend or revoke certification or provisional certification if the certificate was granted:

- 1) Contrary to these rules and the requirements for certification set forth in Section VI (relating to Requirements for Certification) or the requirements for Provisional Certification set forth in Section XIV (relating to Provisional Certification); or
- 2) To an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Board.

- (c) Denial of an application for certification, provisional certification, or recertification shall be in accordance with Section IX. Except for denial of certification, provisional certification, or recertification, actions by the Board under this section shall be taken in accordance with the procedures set out in Section XII.

AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

XV. ALTERNATIVE DISPUTE RESOLUTION

- (a) Policy. The Board encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures. By doing so, the Board does not waive immunity from suit or sovereign immunity under the Eleventh Amendment to the United States Constitution.
- (b) Initiation of Settlement Conference. At any time after the filing of a complaint against a certified guardian or provisionally certified guardian, and before the Board has conducted a hearing on the complaint, the Director may initiate a Settlement Conference. The Director may initiate the Settlement Conference on the Director's own motion or on the request of any party. However, Settlement Conferences are completely voluntary; all parties must agree before a Settlement Conference can be convened.
- (c) Parties to Settlement Conference. The Complainant and Respondent are the parties in a Settlement Conference. The Board (through one or more Board members, staff, or counsel) may also participate as a party in a Settlement Conference at the sole option of the Board Chair.
- (d) Purpose of Settlement Conference. A Settlement Conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary proceeding or to reach agreement about how to handle disputed matters. The parties may use a mediator for the Settlement Conference pursuant to (f) below or conduct the Settlement Conference without a mediator.
- (e) Power to Settle in Settlement Conference.
 - 1) Does Not Bind Board. The Complainant and the Respondent may not bind the Board to any resolution of a complaint pending before the Board. If the Complainant and the Respondent are able to resolve some or all of the issues, the Board may consider this fact, and the terms of the agreement, in determining what action, if any, to take on the complaint.
 - 2) Participation of Board Member. The Board Chair may appoint one or more Board members or staff to attend the Settlement Conference. The Board representative shall attend the Settlement Conference and participate in the proceedings in good faith and in an effort to resolve the dispute within the parameters of any instructions received from the Board.
 - 3) Review of Settlement by Board. In the event a settlement of some or all of the disputed issues is reached during the Settlement Conference, the Board shall review the terms of the settlement at the next regularly-scheduled Board meeting.
 - (A) Upon review of the settlement, the Board may:
 - (i) Accept the settlement terms;
 - (ii) Reject the settlement terms and restore all proceedings on the complaint to the status quo as it existed immediately prior to the Settlement Conference; or
 - (iii) Refer the matter for further negotiation.
 - (B) The Director shall notify all parties of any action taken by the Board.

**PROPOSED 10/26/07
AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION**

- (f) Use of Mediator in Settlement Conference.
 - 1) Agreement of Parties. The parties may agree to retain a mediator to assist with the Settlement Conference. Parties who wish to explore this option will be given a reasonable time to do so by the Chair.
 - (A) The parties shall notify the Chair in writing of their agreement to retain a mediator. That notice must include: the name, address, and telephone number of the mediator selected, a statement that the parties have entered into an agreement with the mediator as to the rate and method of his or her compensation, and an affirmation that the mediator is qualified to serve as described herein.
 - (B) Upon receipt of a properly-filed notice that complies with this section, the Chair will enter an order referring the case to the mediator.
 - 2) Appointment if No Agreement. If the parties do not agree to a mediator, the Chair may appoint an individual to serve as mediator in the Settlement Conference. If any party objects promptly and with good cause to the mediator appointed, the Chair will appoint another qualified individual to serve as mediator. An objection will be considered prompt if it is received by the Director within ten (10) days of the date of the order appointing the mediator.
 - 3) Qualifications of Mediator. An individual appointed to serve as a mediator under (1) or (2) above must meet the qualifications set forth in Section 154.052, Texas Civil Practice and Remedies Code. Pursuant to Section 154.052(c), an individual who has served as a probate judge in Texas may be appointed to serve as a mediator.
- (g) Payment of Costs. The Board shall not pay any fees or costs associated with the Settlement Conference unless good cause is shown and the Board and the Office of Court Administration agree to do so prior to the Settlement Conference.
- (h) Confidentiality of Communications. All communications in the Settlement Conference between or among the parties, and between each party and the mediator, if any, are confidential under the same terms as provided in Section 154.053(b) and (c) of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceeding. Notes taken during the Settlement Conference by the parties and the mediator shall be destroyed at the end of the process.
- (i) Time Frame for Settlement Conference and Schedule for Disciplinary Action. A Settlement Conference is not intended to delay the process, including the hearing of the action, except by order of the Chair. Deadlines and settings in the disciplinary action may be extended only by motion to, and order of, the Chair.

**PROPOSED 10/26/07
AMENDMENT ADDING ALTERNATIVE DISPUTE RESOLUTION
TO RULES GOVERNING GUARDIANSHIP CERTIFICATION**

- (j) Agreement to be Memorialized.
 - 1) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the Settlement Conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential and not become a part of the disciplinary action case file if there is no requirement of law to the contrary.
 - 2) Any part of an agreement that may affect the disposition of the disciplinary action (such as agreements concerning relevant facts) must be filed in the record of the disciplinary action.
 - 3) Whether a final written agreement reached through a Settlement Conference is subject to or excepted from required disclosure, or is confidential, will be determined in accordance with applicable law.
- (k) Conduct of Mediator. If the parties use a mediator for the Settlement Conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Board matters discussed with the parties in the Settlement Conference. The mediator will report to the Board in writing whether the Settlement Conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.
- (l) Required Filings. Any motion requesting the appointment of a mediator, any objection to the referral of the matter to a Settlement Conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the Settlement Conference must be filed with the GCB.
- (m) Other Disputes. Where appropriate and feasible, the Board will attempt to resolve other disputes in which the Board is a party using alternative dispute resolution procedures in lieu of litigation.

X.

Schedule for Future Board Meetings

CALENDAR - 2008

<p>JANUARY</p> <p>S M T W T S F S</p> <p>6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>							<p>FEBRUARY</p> <p>S M T W T S F S</p> <p>3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29</p>							<p>MARCH</p> <p>S M T W T S F S</p> <p>2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>						
<p>APRIL</p> <p>S M T W T S F S</p> <p>6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30</p>							<p>MAY</p> <p>S M T W T S F S</p> <p>4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>							<p>JUNE</p> <p>S M T W T S F S</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30</p>						
<p>JULY</p> <p>S M T W T S F S</p> <p>6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>							<p>AUGUST</p> <p>S M T W T S F S</p> <p>3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>							<p>SEPTEMBER</p> <p>S M T W T S F S</p> <p>7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30</p>						
<p>OCTOBER</p> <p>S M T W T S F S</p> <p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>							<p>NOVEMBER</p> <p>S M T W T S F S</p> <p>2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30</p>							<p>DECEMBER</p> <p>S M T W T S F S</p> <p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</p>						

STATE HOLIDAYS - 2008				
Month	Day	Day of Week	Type	Name
Jan	1	Tuesday	N	New Year's Day
Jan	21	Monday	N	Martin Luther King, Jr. Day
Feb	18	Monday	N	Presidents' Day
Mar	21	Friday	O	Good Friday
Mar	31	Monday	O	Cesar Chavez Day
Apr	21	Monday	S	San Jacinto Day
May	26	Monday	N	Memorial Day
Jun	19	Thursday	S	Emancipation Day
Jul	4	Friday	N	Independence Day
Aug	27	Wednesday	S	LBJ's Birthday
Sep	1	Monday	N	Labor Day
Sep	29	Monday	O	Rosh Hashanah (sundown)
Oct	8	Wednesday	O	Yom Kippur (sundown)
Nov	11	Tuesday	N	Veterans Day
Nov	27	Thursday	N	Thanksgiving Day
Nov	28	Friday	S	Day After Thanksgiving
Dec	24	Wednesday	S	Christmas Eve
Dec	25	Thursday	N	Christmas Day
Dec	26	Friday	S	Day After Christmas

N = National

S = State

O = Optional State

OTHER HOLIDAYS AND EVENTS - 2008				
Month	Day	Day of Week	Name	
Mar	9	Sunday	Daylight Savings Time begins	
Mar	23	Sunday	Easter	
Apr	16-18	Wednesday-Friday	Texas Guardianship Association Spring Conference, Corpus Christi	
Apr	19	Saturday	Passover begins (sundown)	
Jun	8	Sunday	Shavuot (sundown)	
Sep	1	Monday	Ramadan begins (sundown)	
Oct	4-7	Saturday - Tuesday	NGA Annual Conference Nashville, Tennessee	
Oct	13	Monday	Columbus Day	
Nov	2	Sunday	Daylight Savings Time ends	
Nov	4	Tuesday	Election Day	
Nov	12-14	Wednesday-Friday	Texas Guardianship Association Fall Conference, Waco	
Dec	21	Sunday	Hanukkah begins (sundown)	