

GUARDIANSHIP CERTIFICATION BOARD

MINUTES OF MEETING

May 15, 2009

11:00 a.m.

Office of Court Administration

205 W. 14th St., Sixth Floor

Austin, Texas

COMMENCEMENT OF MEETING

Judge Gladys Burwell called the meeting of the Guardianship Certification Board (GCB or Board) to order on May 15, 2009 at 11:08 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

Lesley Ondrechen, Guardianship Certification Program Director at the Office of Court Administration, called the roll. The following members of the GCB were present:

Judge Gladys Burwell, Chair

Leah Cohen

Barry Anderson

Jason Armstrong

Garth Corbett

Dr. Raymond Costello

Carol Patrice Dabner

Don Ford III

Marlane Meyer

Kathy Strong

Robert Warach

Jason Armstrong, Dr. Raymond Costello and Carol Patrice Dabner attended via telephone conference call. Susan Eason, Phillip A. Grant, Gina Patterson and Patti Turner did not participate. Others present were Carl Reynolds, Executive Director, Lesley Ondrechen, Guardianship Certification Program Director, María Elena Ramón, General Counsel, Judy Speer-Gamino, Assistant General Counsel, Katie Bond, Assistant General Counsel, and Meredith Musick-Higgins, Executive Assistant, of the OCA. Members of the public present at the meeting were Alex Jones and Dr. Barbara Scobey of the Texas Department of Aging and Disability Services (DADS).

Ms. Bond introduced Ms. Ramón, who replaced Margaret Bennett as OCA's general counsel, and Ms. Speer-Gamino, a new attorney in the OCA's Legal Division.

MINUTES OF MEETINGS

A. February 20, 2009

Upon motion by Ms. Meyer and second by Mr. Warach, the minutes of the Board's February 20, 2009 meeting were approved as submitted.

B. March 16, 2009

Upon motion by Mr. Warach and second by Ms. Meyer, the minutes of the Board's March 16, 2009 meeting were approved as submitted.

DIRECTORS' REPORTS

Mr. Reynolds did not make a report, but stated he would speak during the agenda item on legislative updates.

The director informed the Board that public member Susan Eason resigned from the Board on May 13, 2009. She will participate in the Application Review Committee meeting scheduled for May 19. The director will inform the Supreme Court's general counsel so she may inform the Governor's office.

Ms. Ondrechen reported that as of May 12, 2009, 232 guardians are certified and 67 are provisionally certified. She also reported that certified guardian in Fort Worth, Ronald Vickers, Jr., died in January. She noted that since the Board's last meeting, 16 people have moved from provisional certification to certification. She also reported that 40 guardians have been re-certified to date. A short discussion about continuing education requirements followed.

The director updated the Board regarding the request for proposals for a Texas-specific exam, as approved by the Board at its March 16 meeting. Three proposals were received by the OCA and are being evaluated. The Chair remarked she had been contacted by a legislator to give a recommendation for one of the entities who planned to submit a proposal. The director asked Board members to refer any questions received to OCA's purchaser, Veronica Strong. The Board will be informed and an announcement placed on the Board's website once the contract is awarded. Ms. Bond noted this will be as close to June 1 as possible to allow the successful vendor ample time to prepare a new exam for the fall.

Ms. Ondrechen reported on the Guardianship Advisory Board (GAB) meeting she attended on May 1. At that meeting, at the chair's request, she summarized the four bills affecting guardianship certification that are pending in the legislative session. Representatives from several local programs shared information at the meeting on getting local judges and communities to appreciate the benefit of guardianship programs.

The director summarized several bills discussed by the GAB. House Bill 889 relates to examination requirements in certain guardianship matters concerning persons with mental retardation. It clarifies that physicians do not have to comply with the Health and Human Services Commission's rules, but psychologists do. Senate Bill 2435 and companion House Bill 4562 relate to medical assistance program reimbursement for guardianship expenses. The bills establish a schedule for guardianship fees for Medicaid recipients with applied income; a guardian's compensation would not exceed \$175 a month.

UPDATE ON 81ST LEGISLATIVE SESSION

Mr. Jones addressed the Board on Senate Bill 271 relating to DADS taking over guardianships in certain circumstances. It passed the Senate, and is pending in committee in the House. There is no fiscal note attached to it, because there is a cap of 55 on the number of wards who can be transferred.

Ms. Ondrechen told the Board about several bills of interest. Senate Bill 1230 and House Bill 610, companion bills with similar language, establish a Legislative Committee on Aging. It would meet at least biannually and would conduct a continuing study of issues relating to the aging population. Senate Bill 1230 was passed by the Senate, referred to the House Human Services Committee and reported favorably. House Bill 610 passed the House and was referred to the Senate Administration Committee.

House Bill 2260 proposes the adoption in Texas of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in Texas. The House Committee substitute removes reference to the Uniform Act and adds section 895 to the Probate Code regarding determining the most appropriate forum for guardianship proceedings for adults. The bill has been placed on the House General State Calendar for hearing.

House Bill 128, mentioned at February's Board meeting, would require all entities that issue business, professional and occupational licenses to verify applicants' eligibility to work in the United States. No action has been taken on the bill since referral to a subcommittee of the House Licensing and Administrative Procedures Committee in March.

The Senate versions of the four bills affecting guardianship certification - Senate Bills 1053, 1055, 1056 and 1057 - have passed through the House Committees and have been sent to the Local and Consent Calendar.

Mr. Reynolds reported on the status of House Bill 3352, regarding information on those declared incapacitated and mental health commitments relating to applying for a concealed handgun license. The bill is intended to bring Texas into compliance with federal law relating to a database used by gun dealers and sale of firearms. The bill has passed the House and is in the Senate on local calendar. The chair noted that mental health and guardianship cases have not been previously reported, and the clerks will have to do so. The mental health data will be more of a problem than guardianship.

PETITION FOR DISCIPLINARY ACTION

The Board considered the petition to initiate disciplinary action against Amy Janeyé Smith. According to the petition, Ms. Smith has failed to provide her new business contact information to the Board and to designate and notify the Board of the designation of a new certified guardian supervisor, as required by Rules XIV(c)(3) and XIV(c)(4)(A). Rule XIV(c)(1) prohibits her from providing guardianship services because she does not have a designated certified guardian supervisor. The director provided a chronology of events. The documentation provided to the

Board showed that Ms. Smith had been given notice as required by the Board's rules. The Disciplinary Review Committee recommended that Ms. Smith's provisional certification be suspended until such time as she provides the required information to the Board.

Ms. Smith was not present, even though she had received notice of the meeting.

Ms. Dabner moved, and Ms. Meyer seconded, to adopt the Committee's recommendation to suspend Ms. Smith's provisional certification until she complies with the rules. After discussion, the chair called the question and asked for a vote. The motion carried.

The Board recessed at 11:56 a.m. and re-convened at 12:43 p.m.

PROPOSED CHANGES TO RULES GOVERNING GUARDIANSHIP CERTIFICATION

Mr. Ford reported on the Rules Committee's meetings on January 14, February 20 and April 29, 2009. He presented the proposed changes to Rules III, V, VI, VII, XII and XIII, and some changes were made. A change to the wording in Rule V(c)(2) and corrections to cites in Rule XII(d) and (e) were agreed to. After discussion, Mr. Ford moved to publish the proposed rule changes for public comment as amended. Mr. Anderson seconded, and the motion carried.

REQUIRED ANNUAL REPORTING DATA RECEIVED

The director summarized the information received from private professional guardians, local guardianship programs, DADS and county clerks. The data indicate there are private professional guardians and/or local programs serving approximately 3,400 wards in 87 counties. Ms. Ondrechen told the Board that clerks from 95 counties did not file the required reports with the Board. The chair noted that although the statute states that clerks "shall" file the reports, there are no enforcement provisions.

Mr. Jones reported that in 2008, DADS served 733 wards directly and 371 through contracted providers. For those 371, the local program is the guardian, but the State pays the contractor. He noted that not all wards served by local programs are through DADS contracts. Dr. Scobey told the Board that there are now approximately 420 wards served through contracted providers; the number reported is as of December 31, 2008. The director answered questions from the Board and the public on specific information provided.

BOARD POLICIES

A. Attendance by Board Members

The director told the Board the words "at least" were added to section 3.a. of the proposed policy, to clarify Board members are required to attend a minimum of two of four regularly scheduled quarterly meetings in person. Ms. Bond noted the statutory reference was included to give context to the policy.

After discussion, Mr. Ford moved to adopt the policy as modified with an effective date of January 1, 2010 and Ms. Meyer seconded. The motion carried.

B. Public Meetings Policy - Attendance by Telephone

Ms. Bond addressed the Board on its current public meetings policy, which has been interpreted to mean that participation by telephone is limited to Board members. The Board has, on occasion, invited certain non-Board members (e.g., vendors) to participate by telephone. Mr. Reynolds had raised the issue of allowing those with business before the Board (applicants and certified guardians who are the subject of complaints) to participate by telephone, which has been the practice of the other two regulatory boards the OCA supports.

The Board discussed general issues, including logistical and financial considerations, distinguishing between those who have business before the Board and public members who have an interest in the Board's business, and participation by telephone only at the committee level. The consensus was to permit telephone participation, determined on a case-by-case basis, at the committee level only. The Board referred the matter to the Rules Committee for consideration. Ms. Bond will prepare a draft. The chair asked Board members with strong ideas on what should be included to send them to Ms. Bond.

PROVISIONAL CERTIFICATION - CONSIDERATION OF PROPOSED EXPIRATION REMINDER LETTER

Mr. Reynolds suggested a cite to the Rules Governing Guardianship Certification on the Board's website. There were no other comments, and the Board adopted the letter as amended.

CONSIDERATION OF APPLICANTS' CRIMINAL HISTORY

A. Define Parameters

Ms. Bond reported this was discussed at the last Rules Committee meeting. She suggested using Chapter 53 of the Occupations Code as a starting point for defining objective factors to add to the Rules that the Board follows when reviewing applicants' criminal histories. She also mentioned Senate Bill 2164, which sets out criteria that the Department of Information Resources must follow when reviewing criminal history for employees, potential employees, contractors and subcontractors. (Director's note: Senate Bill 2164 was still in committee when the legislative session adjourned on June 1, 2009.)

During the discussion that followed, including concerns about limitations on the Board and legislative scrutiny of how criminal histories are reviewed, the chair turned the meeting over to Ms. Cohen. After discussion, Judge Burwell moved to ask the Rules Committee to consider including provisions in other statutory requirements to consider applicants' criminal history, and to report to the Board at its next meeting. Mr. Corbett seconded, and the motion carried.

Judge Burwell resumed the chair.

B. Applicants for Re-certification or Certification: Considered when Applicant Originally Applied for Certification or Provisional Certification, and No New Criminal History

The director told the Board that in these situations, she has been granting certification or re-certification, assuming everything else on the application is in order. The consensus of the Board was this is the correct course of action.

CERTIFIED AND PROVISIONALLY CERTIFIED GUARDIANS' INFORMATION POSTED ON WEBSITE

Ms. Ondrechen reported that a home address is posted on the website if that is the only address that is provided to the Board; e.g., when a certified guardian is self-employed and the home and work address are the same. She told the Board about the practices of the other two regulatory boards the OCA supports. As part of the re-certification process, the director has been sending a letter, along with the reminder letter, reminding guardians of the Board's practice. If anyone objects to his/her home address being posted, it is taken down. There were no comments.

APPOINTMENT OF COMMITTEES

The Chair appointed the following members to serve for the period July 1 through December 31, 2009:

Application Review Committee

Leah Cohen, Chair; Judge Gladys Burwell; Kathy Strong

Denial of Certification Review Committee

Don Ford, Chair; Patti Turner; Phillip A. Grant

Disciplinary Review Committee

Jason Armstrong, Chair; Barry Anderson; Gina Patterson

PUBLIC COMMENT

Mr. Jones and Dr. Scobey commented during the legislative update, required annual reporting and public meetings policy portions of the meeting. No other public comment was made.

ADJOURNMENT

On motion by Mr. Warach and second by Ms. Meyer, the meeting was adjourned at approximately 2:17 p.m.