

Ethical Principles
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Introduction

Guardianship Abuse

Nevada

Across the county there have been numerous newspaper headlines about guardianship abuses. "Grow old, alone and infirm in Southern Nevada and Clark County will help take care of you. If you're poor, a public guardian will be appointed at county expense to look after you, your money and your property.

If you have money, a private guardian could be appointed by the county. That guardian could help you, but may instead take your money and your property, leaving you destitute. And you'll get a bill for the guardian's services.

In Nevada, the county's private guardianship system is inherently ripe for abuse, and does little to protect the assets or the rights of those most vulnerable to financial abuse. People such as Kristina Berger, 52, whose severe bipolar disorder made her one of the more than 8,500 elderly or incapacitated Clark County residents deemed in need of a legal guardian.

It also made her a victim.

Over the course of five years, Berger's court-appointed private guardian systematically drained her \$495,000 estate nearly dry.

The licensed private guardian, Patricia Bristol, 39, was caught only when someone from outside of the guardianship system called police. She is now serving three to eight years in prison for stealing everything from cash to jewelry and expensive purses from Berger and other wards."¹

On November 5, 2018, KXNT 840 radio in Nevada, reported that private fiduciary, April Parks, her office manager Mark Simmons, her husband Gary Neal Taylor, and her attorney Noel Palmer Simpson were collectively indicted on 270 counts for elder abuse exploitation, representing the most significant guardianship indictment in Nevada's history

¹ Las Vegas Review-Journal posted April 11, 2015 and updated April 13, 2015

Parks faces a maximum prison sentence of 84 years in prison between 2 cases. Simmons faces a maximum prison sentence of 54 years, Taylor (husband) plea agreement jointly recommends a sentence of 24-60 months in prison. Simpson (attorney) will receive a recommendation of probation in exchange for her cooperation

A recent AARP magazine article reported on the case of Kise Davis. Mr. Davis, an Army translator was stationed in Japan where he met Kise. They were married in 1956 and traveled to different states. Mr. Davis was previously married and had two sons. Kise was able to establish a relationship with her two stepsons. After Mr. Davis died, Kise continued to live independently with ongoing contact with Larry, her stepson. Eventually, Kise developed the early stages of dementia. Larry had a power of attorney and periodically visited her and called her. He could see she was declining and suggested she move closer to Sonoma, California, closer to him and his family. Before the arrangements were finalized, Kise was hospitalized prompting the appointment of a guardianship company called Advocate Services of Las Cruces. Since Larry was not a blood relative or adopted, Larry was not given notice.

Once Larry learned of the guardianship, he hired an attorney and had to persuade the local judge that he had Kise's best interest at heart. He was able to finally wrestle the guardianship away from the professional guardian and move her to California at considerable personal cost and cost for Kise.

Public Sector

On June 4, 2016 ABC Action News reported; "There are stunning allegations against an entire Fresno County department. Three employees are accused of stealing from the dead. The District Attorney's office is pursuing this case thoroughly; officials said Thursday... Three unnamed Fresno County employees of the Public Administrators Office are now accused of stealing from the dead.

Dr. David Hadden, the elected official in charge of what was the County Coroner and Public Administrators office, said there was a system in place to prevent theft in what he calls 'an office subject to abuse. When they go out to an estate to take inventory, they never take it by themselves; they always have somebody with them so there's a check. But what good does it do when they're both corrupt."

A few days later, the Fresno Bee (July 2, 2015) reported that the State Justice Department would be investigating the thefts within the Fresno County's Public Administrators Office.

As these stories suggest, there are a multitude of people who are watching guardians. So, it is important to understand your ethical responsibilities.

Objectives

1. Decision-making Models
2. Difference Between Ethics and Standards
3. Ethical Principles
4. Examples of how these principles apply to your everyday work.

Definition of a fiduciary

Black's Law Dictionary provides a definition as to what a fiduciary is. It states, "The term is derived from the Roman law, and means a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking."

United States Senate Committee on Aging

During November 2018, the US Senate Committee on Aging issued a report on Strengthening State Effectiveness and Overhaul the Guardianship Statutes and Protect Older Americans. The key areas were:

- Oversight of Guardians and Guardianship Arrangements.
- Alternatives to Guardianship and Restoration of Rights.
- The Need for Better Data.

The Recommendations to address their findings were:

- Enhanced Monitoring
- Background Checks
- Improved Collaboration
- Volunteer Visitor Programs
- Training

Decision-making

Supportive Decision-making

The concept of Supportive Decision-making is now being adopted by many states. Texas is the most recent state that adopted the concept of supportive decision-making thus, this definition is offered. (Texas Estates Code, Subtitle I, Title 3, Section 1357.001 (3), "Supported decision-making means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live,

the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.”

While some individuals, believe that supportive decision-making can be a model for conservators, the caveat one should remember, is that once given guardianship/conservatorship powers, there cannot be a delegation of that responsibility. If there is no personal conservatorship, supportive decision-making is useful.

Substitute Judgment

“The principle of substituted judgment requires the surrogate to attempt to reach the decision the disabled person would make if that person were able to choose.” Use of this model for decision- making allows the guardian to make decisions in accord with the disabled person’s own definition of well-being. It is critical to note that this model can only be used if the guardian, through available sources of information, is able to determine the prior preferences of the ward. Use of this Model, is based on the belief that this type of decision- making should be utilized if possible, and imposes a duty on guardians to attempt to find this information.

Since this model of decision-making is ethically preferred, and since a guardian may not have had prior relationship with the ward, the guardian will often need to look to others for assistance in learning about the ward’s preference.”²

Best Interest Standard

The Best Interest Standard mirror the view that the guardian’s duties are akin to those imposed on a parent. Under this standard, the charge of the guardian is to make an independent decision on behalf the ward which will be in the ward’s best interest as defined by more objective, societally shared criteria. This type of decision making is most appropriate for individuals without previous preferences are unknown.

Difference Between Ethics and Standards

During this discussion, it is important to understand the difference between ethics and standards. There are crossovers.

Ethics are based on human principles of right and wrong. Professions also develop a Code of Ethics as a moral guideline on how to conduct business. One of the oldest Code of Ethics in the Hippocrates Oath which is still held sacred to physicians. This Oath requires physicians treat the ill to the best of one’s ability,

to preserve a patient's privacy, to teach the secrets of medicine to the next generation.

Fiduciary ethics provide a framework on how one treats their ward.

Legal Standards, on the other hand, are standard set forth in laws and regulations. As we discuss a few of the State Standards, what is noteworthy is when there are standards dictating the actions of fiduciaries, failure to follow the standards creates a breach of duty for the fiduciary.

A good example is NGA standard 3. A guardian selects the option that places the least restrictions on the person's freedom and rights. California has ethical standards found in California Code of Regulations Section 4470(f) "Consistent with the licensee's fiduciary duties, the licensee shall provide or arrange for services to the consumer, to the extent they are appropriate and reasonable based upon the needs of the consumer, that are in the best interest of the consumer."

It is important to know if there are any legal standards placed for fiduciaries in your state.

The Ethical Principles I will discuss are six principles, but each principle covers key concepts a fiduciary must understand.

Protect the Civil Rights and liberties of the Conservatee and Maximize Independence and Self-Reliance.

- Appointment Process
- Limitation of conservatorship powers
- Act as advocate on safeguarding the civil and legal rights.
- Protect the conservatee's right to privacy
- Right to practice religion
- Right of Association (receive visitors)
- Freedom of Speech
- Right to receive mail

Exhibit highest degree of trust, loyalty

- Treat the conservatee with dignity.
- Provide services with respect to the dignity and uniqueness of the client unrestricted by consideration of social or economic status, race, age, sex, color, creed, national origin, religion, sexual orientation personal attributes, or the nature of medical problems.

- Be honest with the conservatee.
- Listen, show empathy and understanding.
- Protect the position of trust.
- Use every reasonable and good faith effort to ascertain the desires of the conservatee in any action.
- Avoid any conflicts of interest.
- Protect the conservatee's right to privacy by protecting confidentiality.

Residence – Least Restrictive Placement

- Refrain from moving conservatee from his/her home or separate from family and friends unless such action is based upon the best interest of the conservatee.
- Conduct placement assessments to determine the least restrictive placement.
- Monitor placement.
- Protect conservatee from physical harm or abuse.

Consent to care, treatment and services represents the least restrictive form of intervention available.

- Conservator provides informed medical consent after determining the preferences of the conservatee.

Management of the Estate by Exercising intelligence, prudence, diligence and avoidance any self-interest.

- Complies with existing local, state and federal laws as a minimum guide.
- Maintain personal integrity, and assume responsibility and accountability for individual judgement and actions, and eliminate any possibility of a conflict of interest or self-dealing.
- Protect the assets of the estate.
- Maintain competence in professional skills.
- Cooperate with other entities engaged in, or supportive of, collateral services to promote quality programs.
- A guardian respects that the money and property being managed belong to the conservatee.
- Maintain detailed fiduciary records as required by law.
- Fees shall be considered reasonable when approved by the Court.

Termination and limitation of the Conservatorship

- When appropriate and in the best interest of the conservatee a conservator shall seek, limitations on the conservatee's disability,

elimination of unnecessary powers or termination of the proceeding and restoration of the conservatee's legal capacity.

National Guardianship Association

1. A guardian treats the person with dignity.
2. A guardian involves the person to the greatest extent possible in all decision making.
3. A guardian selects the option that places the least restrictions on the person's freedom and rights.
4. A guardian identifies and advocates for the person's goals, needs, and preferences.
5. A guardian maximizes the self-reliance and independence of the person.
6. A guardian keeps confidential the affairs of the person.
7. A guardian avoids conflicts of interest and self-dealing.
8. A guardian complies with all laws and court orders.
9. A guardian manages all financial matters carefully.
10. A guardian respects that the money and property being managed belong to the person.

Model Code of Ethics

The last Code of Ethics that will be presented is the National Guardianship Association Code of Ethics authored by Michael D. Casasanto, Mitchell Simon, and Judith Roman in 1988.

In the introduction, the authors identified "the purpose of the Model Code is to suggest ethical and legal standards designed to simplify and improve this decision-making process"

The Model Code Preamble provides insight into the states obligation to protect individuals who are incapacitated. "The Preamble states: "in its purest form, guardianship represents an exercise of the state's *parens patriae* authority to protect individuals who are incapable of making decisions for themselves. In theory, the concept of guardianship is rooted in the moral duty of beneficence. Under this theory, individuals subject to guardianship are entitled to enhanced protection from the state. That is, since the imposition of guardianship involves the removal of fundamental rights from the individual ward, the guardian is required to exercise the highest degree of trust, loyalty and fidelity in making decisions on behalf of the ward."

Historically there is a strong relationship between the guardian and ward and this same relationship is evident today. The guardian and in our case the conservator has the highest duty towards his or her ward or conservatee.

Decision-making under this model is the best interest standard and the substituted judgment. Another model is now being introduced is called supported decision-making. All three standards are listed below so that you can determine

what type of decision you will make depending on the circumstances of each incident.

The Model Code of Ethics has six (6) rules:

“Rule 1 –Decision-making: General Principles:

A guardian shall exercise extreme care and diligence when making decisions on behalf of the ward. All decisions shall be made in a manner, which protects the civil rights and liberties of the ward and maximizes independence and self-reliance.

Rule 2 –Relationship between Guardian and Ward:

The guardian shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward.

Rule 3- Custody of the Person: Establishing a Place of Abode:

The guardian shall assume legal custody of the ward and shall ensure the ward resides in the least restrictive environment available.

Rule 4 – Custody of the Person: Consent to Care, Treatment and Services:

The guardian shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least restrictive form of intervention available.

Rule 5-Management of the Estate:

The guardian of the estate shall provide competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise intelligence, prudence and diligence and avoid any self-interest.

Rule 6- Termination and Limitation of the Guardianship:

The guardian has an affirmative obligation to seek termination or limitation of the guardianship whenever indicated.

California Law related to fiduciaries and the Public Guardian

A Public Administrator or Public Guardian is guilty of a crime who:

- Purchases, directly or indirectly, the property of any estate or a claim against any estate administered by the PA/PG.
- Acts upon any transaction or expenditure in connection with administration of an estate by the public administrator, public guardian or public conservator in his official capacity, when he has a financial interest in such transaction or expenditure.

Breach of Duty

- Failure to use ordinary care and diligence in the management of the estate. Public fiduciaries are held to a higher standard of care.
- Failure to file and inventory and appraisal on time.
- Continued failure to perform duties or incapacity to perform duties suitability.
- Conviction of a felony.
- Gross immorality.
- Insolvency or bankruptcy of the conservator.

California Codes.

California Government Code Section 27443 states: "Every person holding the office of public administrator, public guardian, or public conservator and any deputy or agent of such officer is guilty of a crime who:

- (a) Purchases, directly or indirectly, the property of any estate or a claim against any estate administered by any public administrator, public guardian, or public conservator in his official capacity, or
- (b) Acts upon any transaction or expenditure in connection with the administration of an estate by the public administrator, public guardian or public conservator in his official capacity, when he has a financial interest in such transaction or expenditure, or, having knowledge of such interest is associated in business with anyone who has such an interest.

Subdivisions (a) and (b) shall not be applicable to any act specifically authorized by court order.

Any violation of this section is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or both such fine and imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code. Upon conviction of this section a person forfeits his office. This section is not intended to preclude prosecution under any other provisions of the criminal law, which are otherwise applicable.

This code section also applies to employees of the before mentioned offices. (Government Code Section 27443.5) The most common examples include purchasing a conservatee or decedent's real and personal property. Also, included in this provision is "straw man" transaction. This means a third-party purchases property on your behalf. The recommendation is not to have any family members participate in any real or personal property sales.

A breach of one's fiduciary duty may result in fines and removal. Probate Code Section 2650: "A guardian or conservator may be removed for any of the following causes:

- (a) Failure to use ordinary care and diligence in the management of the estate.
- (b) Failure to file an inventory or an account within the time allowed by law or by court order.
- (c) Continued failure to perform duties or incapacity to perform duties suitably.
- (d) Conviction of a felony, whether before or after appointment as guardian or conservator.
- (e) Gross immorality.
- (f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties.
- (g) In the case of a guardian of the person or a conservator of the person, acting in violation of any provision of Section 2356.
- (h) In the case of a guardian of the person of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.
- (i) In the case of a conservator appointed by a court in another jurisdiction, removal because that person would not have been appointed in this state despite being eligible to serve under the law of this state.
- (j) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservator; but, in considering the best interests of the ward, if the guardian was nominated under Section 1500 or 1501, the court shall take that facts into consideration.

In the Supreme Court of Texas

Misc. Docket No. 16-9103

Adoption of Code of Ethics and Minimum Standards for Guardianship Services

June 24, 2016

Certified Guardians

Code of Ethics and Minimum Standards for Guardianship Services

Code of Ethics

Preamble. The purpose of this Code of Ethics and Minimum Standards for Guardianship Services (Minimum Standards) is to protect the interests of incapacitated persons in Texas by ensuring that certified guardians and guardianship programs provide guardianship services in a professional and competent manner. These standards are promulgated by the Texas Supreme Court pursuant to Section 155.101 of the Texas Government Code.

1. *Ward's Independence and Self-Reliance Promoted.* Guardianships in Texas are designed to grant authority over an incapacitated person only to the extent necessary to promote and protect the incapacitated person's well-being. To that end, the guardian must seek to encourage the development or maintenance of maximum independence and self-reliance to the extent consistent with the ward's health and safety and financial circumstances, with the eventual goal, if possible, of self-sufficiency.
2. *Fiduciary Relationship.* A guardian is a fiduciary of a ward under the guardian's care and must exhibit the highest degree of loyalty and fidelity in the guardian's relations with the ward.
3. *Confidentiality.* A guardian must treat information relating to a ward under the guardian's care as confidential and may disclose such information only with the consent of the ward or, if the ward cannot give consent, only as necessary to promote and protect the ward's well-being. To the extent not inconsistent with the ward's direction and best interests, or to the extent necessary to respond to a complaint or investigation, a guardian may disclose information about the ward's condition to family and friends of the ward or to an appropriate government entity. A guardian must disclose information about those matters specified in Section 1151.056, Texas Estates Code, to a ward's spouse, parents, siblings and children, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056, Texas Estates Code.
4. *Ward's Preferences Generally Respected.* When making decisions on behalf of a ward, a guardian must strive to act in accordance with the known or ascertainable preferences of the ward, including preferences expressed in valid estate planning documents, unless to do so would cause substantial harm to the ward's person or property, in which case the guardian should make decisions that are in the best interest of the ward. A guardian must regularly visit and, to the extent feasible, confer with the

ward regarding decisions to be made in and on the ward's behalf. To the extent not inconsistent with the ward's direction and best interests, a guardian may confer with family and friends of the ward concerning the ward's preferences.

5. *Duty of Competence.* A guardian of the person must make reasonable and informed decisions about the ward's residence, care, treatment, and services. A guardian of the estate must take care of and manage the estate as a prudent person would manage the person's own property unless relevant law imposes a higher standard of care. In either case, a guardian must exercise reasonable diligence to remain informed about options available to the ward to promote independence and self-reliance. A guardian must refrain from making decisions outside of the scope of authority granted to the guardian by law or court order.
6. *Less Restrictive Alternatives Preferred.* In determining the ward's residence, a guardian must strive to select a residence that represents the least restrictive environment available, both practically and financially. In making decisions relating to the ward's health, the guardian must strive to select care, treatment and service options that represent the least restrictive form of intervention available, both practically and financially. In either event, the guardian must give due consideration to the ward's preferences and well-being.
7. *Avoidance of Conflicts of Interest and Self-Dealing.* A guardian must avoid conflicts of interest and refrain from personally engaging in transactions with the ward and other forms of self-dealing, except in a manner authorized by law.
8. *Responsibility to Keep Court Apprised of Condition of Ward's Person or Property.* A guardian must keep the court monitoring the guardianship apprised of the guardian's and ward's whereabouts and the condition of the ward's person and estate, including timely filing reports and accounts as required by law or court order, and updating the court regarding significant, material changes as they occur.
9. *Responsibility to Seek Modification or Termination of Guardianship.* A guardian must seek modification of the terms of the guardianship or termination of the guardianship when appropriate to promote the independence and self-reliance of the ward. Upon termination of a guardianship, the guardian must settle and close the guardianship competently and without unnecessary delay.
10. *Responsibility to Manage Caseload.* A guardian must not accept a new appointment if doing so would substantially and adversely affect the guardian's ability to fulfill duties to any ward already under the guardian's care. When a guardian can no longer effectively perform the duties of the guardian to a ward under the guardian's care, the guardian must take

necessary steps to alert the court of the need for the appointment of a successor guardian.

Minimum Standards for Guardianship Services

1. *Applicability.* These Minimum Standards apply to the provision of guardianship services by certified guardians, guardianship programs, and the Texas Department of Aging and Disability Services.
 2. *Relationship with the Court.*
 - (a) Guardianships are established through a legal process and are subject to the supervision of the court.
 - (b) The guardianship court order determines the authority and the limitations of the guardian.
 3. (c) The guardian must know the extent of the powers granted by the court and must not act beyond those powers.
 4. (d) The guardian must clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions. 4
 5. (e) The guardian must obtain court authorization for actions that are subject to court approval.
 6. (f) The guardian must submit reports regarding the status of the guardianship to the court as ordered by the court or required by the Texas Estates Code, but not less often than annually.
 7. (g) All payments to the guardian from the assets of the ward must follow applicable federal or Texas statutes, rules, and requirements and are subject to review by the court.
3. *Relationship with the Ward.*
 1. (a) The guardian must maintain a professional relationship with the ward. The guardian must treat the ward with respect, consideration, and recognition of the ward's dignity and individuality.
 2. (b) The guardian must not engage in sexual relations with a ward.
 3. (c) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must keep the ward informed about the terms and limitations of the guardianship.
 4. (d) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must provide the ward contact information for the court, the Judicial Branch Certification Commission, the Department of Family and Protective Services, Disability Rights Texas, and other state and local agencies and organizations which provide resources on aging, disability, mental health, and intellectual and developmental disabilities.
 4. *Relationship with Family Members and Friends of the Ward.*
 1. (a) The guardian must maintain a professional relationship with the ward's family and the ward's friends.

2. (b) The guardian must recognize the value of family and friends to the quality of life of the ward. The guardian must encourage and support the ward in maintaining contact with family members and friends when doing so benefits the ward.
3. (c) The guardian must assist the ward in maintaining or reestablishing relationships with family and friends, except when doing so would not be of benefit to the ward.
4. (d) When disposing of the ward's assets, the guardian may notify family members and friends and give them the opportunity, with court approval and in compliance with the Texas Estates Code, to obtain assets (particularly those with sentimental value).
5. (e) The guardian must make reasonable efforts to preserve property designated in the ward's will and other estate planning devices executed by the ward. Subject to court approval, the present needs of a ward, if not covered by other property, may have priority over preservation of designated property. (f) The guardian may maintain communication with the ward's family and friends regarding significant occurrences that affect the ward when that communication would benefit the ward.

6 (g) The guardian must maintain communication with the ward's spouse, parents, siblings, and children if the ward is admitted to a medical facility for acute care for three days or longer, the ward's residence has changed, or the ward is staying at a location other than the ward's residence for longer than a week, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056, Texas Estates Code.

7 (h) The guardian may keep immediate family members and friends advised of all pertinent medical issues when doing so would benefit the ward. The guardian may request and consider family input when making medical decisions.

8 (i) The guardian must inform the ward's spouse, parents, siblings, and children if the ward dies and, in the event of the ward's death, of any funeral arrangements and the ward's final resting place, unless the court relieves the guardian of the duty to do so in accordance with Section 1151.056 Texas Estates Code.

5. Relationship with Other Professionals and Providers of Service to the Ward.

1. (a) The guardian must treat all professionals and service providers with courtesy and respect and strive to enhance cooperation on behalf of the ward.
2. (b) The guardian must develop and stay current with the services, providers, facilities, and community resources to ensure that the ward receives high-quality services from the most appropriate provider.

3. (c) The guardian must coordinate and monitor services needed by the ward to ensure that the ward is receiving the appropriate care and treatment. A guardian must not provide direct services to the ward for compensation unless a written contract approved by the court authorizes the provision of such services.
4. (d) The guardian must engage the services of professionals (such as attorneys, accountants, stockbrokers, real estate agents, doctors) as necessary to appropriately meet the needs of the ward and in compliance with the Texas Estates Code.
5. (e) The guardian must avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c). Governmental entities and guardianship programs providing multiple services must maintain an arm's-length relationship between those services.

6. *Informed Consent.*

1. (a) The guardian must enable the ward to exercise the ward's right to make informed consent decisions to the greatest extent of the ward's capacity and ability. Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must annually explain the rights of the ward listed in §1151.351, Texas Estates Code, in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.
2. (b) Unless this right of the ward is limited by a court or otherwise restricted by law, the guardian must provide the ward a copy of the guardianship order, letters of guardianship, contact information for the court that issued the letters, contact information for the Judicial Branch Certification Commission, and other entities required by §1151.351, Texas Estates Code.
3. (c) The guardian, standing in the place of the ward who lacks capacity, must access the same information that would have been given to the ward if the ward had capacity in order to make informed substituted judgments on behalf of the ward.
4. (d) The guardian must make a good faith effort to determine whether the ward has previously stated any preferences before making any decisions on the ward's behalf and then follow these preferences unless doing so would adversely affect the ward or the ward's estate.

5. (e) The guardian may make decisions that are contrary to the known preferences of the ward when following the wishes of the ward would adversely affect the ward.
7. *Standards for Decision-Making.*
 1. (a) Each decision made by the guardian must be an informed decision based on the principle of Informed Consent.
 2. (b) Substituted Judgment.
 1. (1) Substituted Judgment is the principle of decision-making that substitutes, as the guiding force in any surrogate decision made by the guardian, the decision the ward would have made when competent.
 2. (2) Substituted Judgment promotes the underlying values of self-determination and well-being of the ward.
 3. (3) Substituted Judgment is not used when following the ward's wishes would cause substantial harm to the ward or when the guardian cannot establish the ward's prior wishes.
 3. (c) Best Interest of the Ward.
 1. (1) Best Interest is the standard of decision-making the guardian should use when the ward has never had capacity or when the ward's wishes cannot be determined.
 2. (2) The Best Interest standard requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the ward.
3. (3) The Best Interest standard is used when following the ward's wishes would cause substantial harm to the ward, or when the guardian is unable to establish the ward's prior or current wishes.
4. (4) Best Interest decisions include consideration of the ward's current and previously expressed wishes.
8. *Least Restrictive Alternative.*
 1. (a) The guardian must carefully evaluate the alternatives that are available and choose the one that best meets the needs of the ward while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
 2. (b) The guardian must weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the ward and maintaining the ward's protection and safety.
 3. (c) The following guidelines apply in the determination of the least restrictive alternative:
 1. (1) The guardian must become familiar with the available options for residence, care, medical treatment, vocational training, and education.

2. (2) The guardian must make a good faith effort to know the ward's preferences.
3. (3) The guardian must consider assessments of the ward's needs as determined by specialists. This may include an independent assessment of the ward's functional ability, the ward's health status, and the ward's care needs.

9. *Self-Determination of the Ward.*

1. (a) The guardian must provide the ward with every opportunity to exercise those rights that

the ward might be capable of exercising as they relate to the care of the ward's person.

2. (b) The guardian must encourage the development or maintenance of maximum self-reliance and independence of the ward.
3. (c) The guardian must advocate for individualized planning and the least restrictive alternative on behalf of the ward.

10. *Duties Regarding Diversity and Personal Preference of the Ward.* The guardian must make a good faith effort to determine the extent to which the ward identifies with particular ethnic, religious, gender, cultural, and personal values and to make decisions consistent with these values, unless doing so would result in substantial harm to the ward's person or property.

11. *Confidentiality.*

1. (a) Subject to state and federal law, the guardian must keep the affairs of the ward confidential.
2. (b) The guardian must respect the ward's privacy and dignity, especially when the disclosure of information is necessary

(c) Disclosure of information must be limited to what is necessary and relevant to the issue being addressed in the best interest of the ward.

12. *Duties of the Guardian of the Person.* The guardian of the person has the following duties and obligations to the ward unless the order of appointment provides otherwise:

1. (a) To see that the ward is living in the most appropriate environment that addresses the ward's wishes and needs.
 1. (1) The guardian must authorize moving a ward to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of the ward, and serves the overall best interest of the ward.
 2. (2) When the guardian considers involuntary or long-term placement of the ward in an institutional setting, the bases of the

decision must be to minimize the risk of substantial harm to the ward, to obtain the most appropriate placement possible, and to secure the best treatment for the ward.

2. (b) To ensure that provision is made for the support, care, comfort, health, and maintenance of the ward.
3. (c) To make reasonable efforts to secure for the ward medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize the ward's potential for self-reliance and independence.
4. (d) To seek specific judicial authority when the dissolution of a marriage or another extraordinary circumstance is being addressed.
5. (e) To file with the court, on a timely basis but not less often than annually, all reports required by the Texas Estates Code or as ordered by the court.
6. (f) To petition the court for modification or termination of the guardianship when the ward's capacity is partially or completely restored.

13. *Guardian of the Person: Initial and Ongoing Responsibilities.* (a) After appointment, the guardian must:

1. (1) Address all issues of the ward that require immediate action.
2. (2) Meet with the ward as soon after the appointment as is feasible. At the first meeting, to the extent possible given the ward's capacity to comprehend and communicate, the guardian must:
 1. (A) Communicate to the ward the role of the guardian;
 2. (B) Explain the rights retained by the ward;
 3. (C) Unless this right of the ward is limited by a court or otherwise restricted by law, deliver a copy of the guardianship order, letters of guardianship, a copy of the Bill of Rights for Wards, Subchapter H, Chapter 1151, Texas Estates Code, and contact information for the court that issued the order and letters.
4. (D) Unless this right of the ward is limited by a court or otherwise restricted by law, provide the ward contact information for regulatory agencies and resource organizations as required by §1151.351, Texas Estates Code.
5. (E) Assess the ward's physical and social situation, the ward's educational, vocational, and recreational needs, the ward's preferences, and the support systems available to the ward; and
6. (F) Attempt to gather any missing necessary information regarding the ward.

(3) Notify relevant agencies and individuals of the appointment of a guardian and complete the intake process by documenting:

1. (A) Physician's evaluation.

2. (B) Psychological or neuropsychological evaluation, if appropriate.
 3. (C) An inventory of advance directives: Such statements of intent would include, but are not limited to, powers of attorney, living wills, and organ donation statements.
2. (b) The guardian must obtain all public benefits for which the ward is eligible and are appropriate to the ward's best interest.
 3. (c) The guardian must establish and maintain contact with the guardian of the estate or other fiduciary of the ward, where appropriate.
 4. (d) The guardian must develop and monitor a written guardianship plan setting forth short- term and long-term goals for meeting the ward's needs that are addressed in the guardianship order.
 1. (1) The plan must use a multidisciplinary approach to address medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward as applicable and appropriate.
 2. (2) The plan must also address whether the ward's finances and budget are in line with the services the ward needs and are flexible enough to deal with the changing status of the ward.
 3. (3) Short-term goals are issues that need to be addressed immediately or as soon as possible and long-term goals are issues that require on-going attention.
 4. (4) The plan must be updated no less often than annually.
 5. (e) The guardian must maintain a separate file for each ward. The file must include, at a minimum, the following information and documents:
 1. (1) The ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications;
 2. (2) All legal documents involving the ward;
 3. (3) Advance directives;
 4. (4) A list of key contacts;
 5. (5) A list of service providers, contact information, a description of services provided to the ward, and progress/status reports;
 6. (6) A list of all known over-the-counter and prescribed medication the ward is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication if applicable. The guardian must update the list after each of the guardian's visits or as the guardian receives information;
 7. (7) Documentation of all ward and collateral contacts, including the date, time, and activity;
 8. (8) Progress notes that are as detailed as necessary to reflect contacts made and work done regarding the ward;
 9. (9) The guardianship plan;
- (10) An inventory, if required;

(11) Assessments regarding the ward's past and present medical, psychological, and social functioning;

(12) Documentation of the ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service; and

(13) A photograph of the ward.

(f) The guardian must visit the ward not less often than monthly consistent with the requirements below unless otherwise ordered by the court.

1. (1) The guardian must assess the ward's physical appearance and condition and assess the appropriateness of the ward's current living situation and the continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
2. (2) The guardian must maintain substantive communication with service providers, caregivers, court visitors, and others attending to the ward.
3. (3) The guardian must make a good faith effort to participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of the ward.
4. (4) The guardian must make a good faith effort to obtain an appropriate service plan for the ward from each service provider and must take appropriate action to ensure that service plans are being implemented.
5. (5) The guardian must regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding the ward at the place of residence and at any program site to ascertain that the care plan is being properly followed.
6. (6) The guardian must advocate on behalf of the ward with staff in an institutional setting and other residential placements. The guardian must assess the overall quality of services provided to the ward, using accepted regulations and care standards as guidelines and seeking remedies when care is found to be deficient.

(7) The guardian must maintain a record of each in-person visit with the ward, including the date, time, and location of the visit. Upon request, the guardian must provide a copy of the record to the Judicial Branch Certification Commission and the court.

14. *Decision-Making About Medical Treatment.*

1. (a) The guardian must promote, monitor, and maintain the ward's health and well-being.
2. (b) The guardian must ensure that all reasonably available medical care necessary for the ward is provided.

3. (c) The guardian must make a good faith effort to determine whether the ward, before becoming incapacitated, executed any advance directives, such as a living will, a durable power of attorney, or any other specific written or oral declaration of intent. On finding such documents, the guardian must consider the ward's wishes in the decision-making process.
4. (d) The guardian must make decisions about withholding or withdrawing medical treatment in accordance with the above provisions unless restricted by the order appointing the guardian.
5. (e) Subject to available local and financial resources, the guardian must explore treatment options in medical interventions posing a significant risk to the ward.

15. *Conflict of Interest: Ancillary and Support Services.*

1. (a) The guardian must avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c).
2. (b) If the guardian becomes aware or is made aware that a conflict of interest exists in the guardian's relationship with a ward, the guardian must immediately disclose to the court the existence and nature of the conflict of interest.
3. (c) Unless authorized by court order, the guardian, other than the Department of Aging and Disability Services and guardianship programs, must not directly provide housing, medical, or other direct services to the ward. Persons who own, operate or are employed by, or associated with, an entity that provides health care, habilitation, support, vocational, residential supervision or other direct services do not qualify as a guardianship program. This includes persons who own, operate or are employed by or associated with such entities which are not licensed.

(1) The guardian must coordinate and assure the provision of all necessary services to the ward rather than providing those services directly.

(2) To ensure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian must be independent from all service providers.

4. (d) The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.
5. (e) The guardian must not solicit or accept incentives from service providers.
6. (f) The guardian must consider various ancillary or support service providers and select the providers that best meet the needs of the individual ward.

16. *Duties of the Guardian of the Estate.*

1. (a) The guardian of the estate must maintain and manage the ward's estate as a prudent person would manage the person's own property consistent with a fiduciary's duties and responsibilities set forth in the Texas Estates Code.
2. (b) The guardian must supervise all income and disbursements of the estate in accordance with the Texas Estates Code.
3. (c) The guardian must manage the estate only for the benefit of the ward.
4. (d) The guardian must safeguard estate assets by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
5. (e) The guardian must keep estate money separate from the guardian's personal money.
6. (f) The guardian must keep the money of individual estates separate.
7. (g) The guardian must make claims against others on behalf of the estate as deemed in the best interest of the ward and must defend against actions that would result in a loss of estate assets in compliance with the Texas Estates Code.
8. (h) The guardian must employ prudent accounting procedures when managing the estate.
9. (i) The guardian must determine if a will exists and, for estate planning purposes only, may request that a copy be provided to the court for in camera inspection under Section 1162.005 of the Texas Estates Code.

17. *Guardian of the Estate: Initial and Ongoing Responsibilities.*

(a) With the proper authority, the initial steps after appointment as guardian are as follows:

(1) The guardian must address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.

(2) The guardian must meet with the ward as soon after the appointment as feasible. At the first meeting the guardian must:

- (A) Communicate to the ward the role of the guardian;
 - 2. (B) Outline the rights retained by the ward and the grievance procedures available;
 - 3. (C) Assess the previously and currently expressed wishes of the ward and evaluate them based on current acuity; and
 - 4. (D) Attempt to gather from the ward any necessary information regarding the estate.
-
- 2. (b) The guardian must prepare a financial plan and budget that correspond with the care plan for the ward. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker must communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the ward.
 - 3. (c) The guardian must post and maintain a bond with surety sufficient for the protection of the estate unless the guardian is exempt from bond by law.
 - 4. (d) The guardian must obtain all public benefits for which the ward is eligible.
 - 5. (e) The guardian must thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
 - 6. (f) The guardian must prepare an inventory of the ward's property in compliance with the Texas Estates Code and as otherwise ordered by the court.
 - 7. (g) All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period in compliance with the Texas Estates Code and as otherwise ordered by the court. All accountings must be complete, accurate, and understandable.
 - 8. (h) The guardian must oversee the disposition of the ward's assets to qualify the ward for any public benefits program.
 - 9. (i) On the termination of the guardianship or the death of the ward, the guardian must facilitate the appropriate closing of the estate and submit a final accounting to the court.
 - 10. (j) The guardian must monitor the personal trust account of the institution-based ward.
 - 11. (k) The guardian must, when appropriate, open a burial account and make funeral arrangements for the ward.

18. *Property Management.*

- 1. (a) The guardian may not sell, encumber, convey, or otherwise transfer property of the ward, or an interest in that property, without judicial authority.

2. (b) The guardian must obtain an independent appraisal of real and personal property whenever ordered by the court.
3. (c) The guardian must provide for insurance coverage, as appropriate, for property in the estate.

19. *Conflict of Interest: Estate, Financial, and Business Services.*

(a) The guardian must avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where Misc. Docket No. 16-9103 Page 14 the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the ward. A conflict of interest may also arise where the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards. The guardian must disclose dual or multiple relationships to the court, except those which are casual, coincidental or allowed under Standard 15(c). Governmental entities and guardianship programs providing multiple services must maintain an arm's-length relationship between those services.

2. (b) If the guardian becomes aware or is made aware that a conflict of interest exists in the guardian's relationship with the ward, the guardian must immediately disclose to the court the existence and nature of the conflict of interest.
3. (c) The guardian must not commingle personal or program funds with the funds of the ward.
4. (d) The guardian must not sell, encumber, convey, or otherwise transfer the ward's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
5. (e) The guardian must not sell or otherwise convey to the ward property from any of the parties noted above.
6. (f) The guardian must not loan, give, or use the ward's income or assets to support or benefit other individuals directly or indirectly unless specific prior court approval is obtained.
7. (g) The guardian must not borrow funds from, or lend funds to, the ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court.
8. (h) The guardian must not profit from any transactions made on behalf of the ward's estate at the expense of the estate, unless authorized to do so by the court. The guardian must not compete with the estate, unless authorized to do so by the court.

20. *Modification and Termination of the Guardianship.* The guardian may seek modification or termination of the guardianship in the following circumstances pursuant to the Texas Estates Code:

1. (a) When it appears that the ward has developed or regained capacity in areas in which he or she was found incapacitated by the court.
2. (b) When less restrictive alternatives exist.
3. (c) When the ward expresses the desire to challenge the necessity of all or part of the guardianship.
4. (d) When the ward has died.

21. *Management of Multiple Guardianship Cases*

(a) The guardian must limit the guardianship caseload to a size that allows the guardian to accurately and adequately provide care, supervise, and protect each ward; that allows a minimum of one visit per month with each ward; that allows regular contact with all service providers; and that allows the guardian to comply fully with all requirements contained in statutes, Rules, Code of Ethics and Minimum Standards for guardians. The guardian should decline to accept additional appointments if to do so would substantially and adversely impair the guardian's ability to fulfill duties to wards already under the guardian's care. When a guardian can no longer effectively perform the duties of the guardian to a ward under the guardian's care, the guardian shall take necessary steps to alert the court of the need for the appointment of a successor guardian.

2. (b) In order to develop and maintain an appropriately sized caseload, the guardian should consider:
 1. (1) Whether the guardian has been appointed as guardian of the person, guardian of the estate, or both for each case in the guardian's caseload.
 2. (2) The complexity and overall demands of each case.
 3. (3) The amount of travel time necessary to visit each ward at least once per month and to have regular contact with each ward's service providers.
 4. (4) The amount of time required to:
 1. (A) complete the necessary tasks, assessments, and observations during a visit with each ward;
 2. (B) contact each service provider for a ward and to obtain from each of them updated information concerning the ward's condition, the services being provided, and any additional or different services needed by the ward;
 3. (C) confer with or contact family and/or friends of the ward, to arrange for visits or other types of contact between the ward and the ward's family and friends;
 4. (D) perform all financial functions which are part of the guardian's responsibilities regarding a ward; and
 5. (E) timely complete all updates to the file of each ward and timely complete all reports required for each ward.

5. (5) Other duties of the guardian, including but not limited to administrative duties, such as documenting the ward's file, listed above.
6. (6) Whether ancillary support is available to the guardian.
3. (c) An individual certified or provisionally certified guardian who at any time has 50 or more wards appointed or assigned to him or her must, within 10 days, report this situation to the Certification Division Director of the Judicial Branch Certification Commission. The report must include a list of all the guardian's cases and must provide for each case the cause number, court and county; the name and residence location of the ward; the type of guardianship (person, estate or both); and the dates the guardian was appointed, qualified and/or assigned to each case. Upon request by the Certification Division Director of the Judicial Branch Certification Commission, the guardian must provide additional information.

22. *Quality Assurance.* The guardian must make a good faith effort to provide quality in the services the guardian delivers and to develop a quality assurance program to that end.

23. *Definitions.*

1. (a) Advance directive – Has the meaning assigned by Section 166.002 of the Texas Health and Safety Code.
2. (b) Advocate - To assist, defend, or plead in favor of another.
3. (c) Best interest - The course of action taken to maximize what is best for a ward. It includes consideration of the least intrusive, most normalizing, and least restrictive alternative possible given the needs and limitations of the ward.
4. (d) Conflict of interest - Includes situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another; situations in which the guardian's responsibilities to a ward will be limited by the guardian's other responsibilities or by a personal interest of the guardian; and situations in which the guardian has dual or multiple relationships with a ward which conflict with each other or has a conflict between the best interests of two or more wards.
5. (e) Corporate fiduciary - Has the meaning assigned by Section 1002.007 of the Texas Estates Code.
6. (f) Court, probate court, statutory court, statutory probate court - Has the meaning assigned by Section 1002.008 of the Texas Estates Code.
7. (g) Direct services - Services on behalf of a ward, including medical and nursing care, respite and hospice care, case management, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

8. (h) Estate - Has the meaning assigned by Section 1002.010 of the Texas Estates Code.
9. (i) Fiduciary - An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another's benefit and subject to the standard of care imposed by law or contract.
10. (j) Functional assessment - A procedure to measure and document on multiple dimensions the functional capacity, including the ability to fully understand and make decisions, to plan and undertake courses of action, and to evaluate the outcome of such courses of action, and the general well-being of an individual.
11. (k) Guardian – Has the meaning assigned by Section 1002.012 of the Texas Estates Code. For the purpose of these Minimum Standards, the term also includes Certified Guardians.

(1) Certified Guardian – A person who is certified to provide guardianship services in this state by the Judicial Branch Certification Commission.

(2) Engaged in the business of providing guardianship services – To perform, offer to perform, or advertise the performance of guardianship services for compensation.

3. (3) Guardian of the Estate - A person or entity appointed by the court who has the powers and duties listed in Section 1151.001 and 1151.151 of the Texas Estates Code or as ordered by the court.
4. (4) Guardian of the Person - A person or entity appointed by the court who has the powers and duties listed in Section 1151.051 of the Texas Estates Code or as ordered by the court.
5. (5) Guardianship Program – A local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.
6. (6) Guardianship Services -- Conducting, performing, or administering such duties or powers as prescribed by the Texas Estates Code or under a court order in a guardianship matter.
7. (7) Private Professional Guardian - A person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(l) Incapacitated person - Has the meaning assigned by Section 1002.017 of the Texas Estates Code.

(m) Informed consent – A person's agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

14. (n) Least restrictive alternative - A mechanism, course of action, or environment that allows the ward to live, learn, and work in a setting that places as few limits as possible on the ward's rights and personal freedoms as appropriate to meet the needs of the ward.
15. (o) Self-determination - A doctrine that states the actions of a person are determined by that person. It is free choice of one's acts without external force.
16. (p) Social services - These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.
17. (q) Substituted judgment - The principle of decision-making that requires implementation of the course of action that comports with the individual ward's known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.
18. (r) Ward - Has the meaning assigned by Section 1002.030 of the Texas Estates Code.

Pennsylvania General Assembly

Chapter 55, Subchapter D, "Powers, Duties and Liabilities of Guardians"

§ 5502. Purpose of chapter.

Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

Section 5521: Provisions concerning powers, duties, and liabilities. Duty of guardian of the person. "It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated shall be respected to the greatest possible extent. Where appropriate, the guardian shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how service will be obtained. The guardian shall also encourage the incapacitated person to participate to the maximum extent, of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.

(b) Duty of guardian of the estate.--The provisions concerning the powers, duties and liabilities of guardians of incapacitated persons' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).
Section 3324 (relating to death or incapacity of fiduciary).
Section 3327 (relating to surviving or remaining personal representatives).
Section 3328 (relating to disagreement of personal representatives).
Section 3331 (relating to liability of personal representative on contracts).
Section 3332 (relating to inherent powers and duties).
Section 3355 (relating to restraint of sale).
Section 3356 (relating to purchase by personal representative).
Section 3359 (relating to record of proceedings; county where real estate lies).
Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).
Section 3372 (relating to substitution of personal representative in pending action or proceedings).
Section 3374 (relating to death or removal of fiduciary).
Section 3390 (relating to specific performance of contracts).
Section 5141 (relating to possession of real and personal property).
Section 5142 (relating to inventory).
Section 5143 (relating to abandonment of property).
Section 5145 (relating to investments).
Section 5146 (relating to guardian named in conveyance).
Section 5147 (relating to proceedings against guardian).
Section 5151 (relating to power to sell personal property).
Section 5154 (relating to title of purchaser).
Section 5155 (relating to order of court)

State of Florida

58M-2.009 Standards of Practice.

(1) DEFINITIONS.

(a) In addition to the terms defined in Chapter 744, F.S., the following definitions are applicable in this rule:

1. "Interested Person" means a person identified as an interested person in a guardianship proceeding. The meaning as it relates to particular wards may vary from time to time and must be determined by the Court according to the particular matter involved.
2. "Family" or "Family Member" means a person or persons who are:
 - a. A relative of an individual within the third degree by blood or marriage, or
 - b. The stepparent of a minor if the stepparent is currently married to the parent of the minor and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the minor's parents as an adverse party.
3. "Friend" means a person who an individual knows and with whom the individual has a bond of mutual affection.
4. "Abuse" means any willful act or threatened act by anyone who causes or is likely to cause significant impairment to a Ward's physical, mental, or emotional health. Abuse includes acts and omissions.
5. "Neglect" means the failure or omission on the part of a caregiver, service provider or guardian to provide the care, supervision, and services necessary to maintain the physical and mental health of a Ward, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a reasonably prudent person would consider essential for the well-being of the Ward, under the same or similar circumstances. The term "neglect" also means the failure of a caregiver, service provider or guardian to make a reasonable effort to protect a Ward from abuse, neglect, or exploitation by others.
6. "Exploitation" means:
 - a. Knowingly obtaining or using, or endeavoring to obtain or use, a Ward's funds, assets, or property with the intent to temporarily or permanently deprive the Ward of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the Ward, or
 - b. Breach of a fiduciary duty to a Ward by the Ward's guardian which results in an unauthorized appropriation, sale, or transfer of property, or

c. Intentionally or negligently failing to effectively use a Ward's income and assets for the necessities required for that Ward's support and maintenance, by the Ward's guardian.

(2) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP TO THE COURT.

(a) Professional Guardians shall know the extent of the powers and the limitations of authority granted to them by the court and all their decisions and actions shall be consistent with applicable court orders and Florida law. Any action taken by a Professional Guardian pursuant to a court order shall not be deemed a violation of this rule.

(b) Professional Guardians shall obtain court authorization for actions that are subject to court approval in advance except for emergency situations.

(c) Professional Guardians shall clarify with the court any questions that the professional guardian has about the meaning of orders or directions from the court before taking action based on the orders or directions.

(d) Professional Guardians shall seek assistance as needed to fulfill responsibilities to the Wards under their guardianship. Professional Guardians shall disclose to the Court any and all employees or agents hired or assigned to perform tasks or duties related to an active guardianship.

(e) All payments to Professional Guardians from the assets of a Ward shall be submitted to the court for prior approval and shall follow the requirements of Section 744.108, F.S.

(f) Professional Guardians shall submit reports regarding the status of their Wards to the court as ordered by the court and as required by Chapter 744, F.S.

(3) THE PROFESSIONAL GUARDIAN'S PERSONAL RELATIONSHIP WITH THE WARD.

Professional Guardians may not engage in sexual activity with a Ward that violates the provisions of Section 744.20041(1)(n), F.S.

(4) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH FAMILY MEMBERS AND FRIENDS OF THE WARD.

(a) Professional Guardians of the person shall allow social interactions between their Wards and their Wards' family and friends in accordance with Section 744.361(13)(b), F.S.

(b) Professional Guardians shall keep interested persons advised of any pertinent medical issues or decisions when ordered to do so by the Court.

(5) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH OTHER PROFESSIONALS AND PROVIDERS OF SERVICES TO THE WARD.

Professional Guardians shall strive to enhance cooperation between all parties on behalf of their Wards, including all professionals and other service providers.

(a) Professional Guardians who are not family members of their Wards may not provide any services other than guardianship services to those Wards except in an emergency. Professional Guardians shall coordinate and monitor services needed by Wards to ensure that Wards are receiving the appropriate care and treatment.

(b) Professional Guardians shall make a good faith effort to cooperate with other surrogate decision-makers for Wards. These include, where applicable, any other guardians, agents under a power of attorney, health care proxies, trustees, U.S. Department of Veterans' Affairs fiduciaries, and representative payees.

(6) INFORMED CONSENT.

(a) Decisions that Professional Guardians make on behalf of their Wards under guardianship shall be based on the principle of Informed Consent.

(b) Informed Consent is a decision maker's agreement to a particular course of action based on a full disclosure of the facts needed to make the decision intelligently.

(c) To have Informed Consent, a decision maker must have adequate information on the issue, must be able to take voluntary action, and must not be coerced.

(d) In evaluating each requested decision, Professional Guardians shall do the following:

1. Have a clear understanding of the issue for which informed consent is being sought,
2. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,
3. Determine the conditions that necessitate treatment or action,
4. Maximize the participation of Wards in understanding the facts and directing a decision, to the extent possible,
5. Determine whether a Ward has previously stated preferences in regard to a decision of this nature,
6. Determine why this decision needs to be made now rather than later,
7. Determine what will happen if a decision is made to take no action,
8. Determine what the least restrictive alternative is for the situation; and,
9. Obtain written documentation of all reports relevant to each decision, if possible.

(7) STANDARDS FOR DECISION-MAKING.

(a) Professional Guardians shall assist and encourage Wards to participate in

decisions, when possible.

(b) Professional Guardians shall, consistent with court orders and state statutes, exercise authority only as necessitated by the limitations of the Ward.

(c) Each decision made by a Professional Guardian shall be an informed decision based on the principle of Informed Consent as set forth in subsection (6).

(d) Professional Guardians shall identify and advocate for the goals, needs, and preferences of their Wards.

1. Professional Guardians shall ask their Wards what they want.

2. If a Ward has difficulty expressing what he or she wants, his or her Professional Guardian shall, to the extent possible, help

the Ward express his or her goals, needs, and preferences.

3. When a Ward, even with assistance, cannot express his or her goals and preferences, Professional Guardians shall seek input from others familiar with the Ward to determine what the Ward may have wanted.

4. To the extent that a Ward's goals and preferences have been made known to a Professional Guardian, the Professional Guardian shall honor those goals or preferences, except when following the Ward's goals and preferences would cause significant impairment to a Ward's physical, mental, or emotional health.

(e) Substituted Judgment.

1. Substituted Judgment is a principle of decision-making which requires the guardian to consider the decision their Ward would have made when the Ward had capacity and use that as the guiding force in any surrogate decision a guardian makes.

2. Substituted Judgment shall be used when making decisions on behalf of a ward except when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health, or when a Professional Guardian cannot establish a Ward's goals and preferences even with support.

(f) Best Interest.

1. Best Interest is the principle of decision-making that should be used only when a Ward has never had capacity, when a Ward's goals and preferences cannot be ascertained even with support, or when following a Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health or his or her property.

2. The Best Interest principle requires a guardian to consider the least restrictive course of action to provide for the needs of a Ward.

3. The Best Interest principle requires guardians to consider a Ward's past practice and evaluate evidence of his or her choices.

4. The Best Interest principle requires the course of action that maximizes what is best for a Ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Ward.

(8) LEAST RESTRICTIVE ALTERNATIVE.

(a) When making a decision, Professional Guardians shall carefully evaluate the ward's resources and the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of Wards under their guardianship, while placing the least restrictions on their Wards' freedoms, rights, and ability to control their environments.

(b) Professional Guardians shall weigh the risks and benefits of each decision and develop a balance between maximizing the independence and self-determination of Wards and maintaining Wards' dignity, protection, and safety.

(c) Professional Guardians shall make individualized decisions. The least restrictive alternative for one Ward might not be the least restrictive alternative for another Ward.

(d) The following guidelines apply in the determination of the least restrictive alternative:

1. Professional Guardians shall become familiar with the resources available for rights delegated to them including: options for residence, care, medical treatment, vocational training, and education for their wards.

2. Professional Guardians shall strive to know their Wards' goals and preferences.

3. Professional Guardians shall consider assessments of their Wards' needs as determined by specialists. This may include an independent assessment of a Ward's functional ability, health status, and care needs.

(9) SELF-DETERMINATION OF THE WARD.

(a) Professional Guardians shall provide Wards under their guardianship with every opportunity to exercise individual rights as they relate to the personal and financial needs of the Ward, as long as that exercise is consistent with court orders regarding the Ward's capacity.

(b) The Professional Guardian shall, whenever possible, seek to ensure that the Ward leads the planning process. If the Ward is unable to lead the process, the Professional Guardian shall, whenever possible, seek their participation.

(10) THE PROFESSIONAL GUARDIAN'S DUTIES REGARDING DIVERSITY AND PERSONAL PREFERENCES OF THE WARD.

Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values. To determine these values, Professional Guardians shall consider the following:

- (a) The Ward's attitudes regarding illness, pain, and suffering;
- (b) The Ward's attitudes regarding death and dying;
- (c) The Ward's views regarding quality of life issues;
- (d) The Ward's views regarding societal roles and relationships; and, (e) The Ward's attitudes regarding funeral and burial customs.

(11) CONFIDENTIALITY.

(a) Professional Guardians shall keep the affairs of Wards under guardianship confidential, unless otherwise provided by law or ordered by the Court.

(b) Professional Guardians shall respect Wards' privacy and dignity, especially when the disclosure of information is necessary. (c) Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed. (d) Professional Guardians shall assist Wards in communicating with third parties unless the disclosure will substantially harm

the Ward.

(12) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.

(a) Professional Guardians appointed guardians of the person shall have the following duties and obligations to Wards under guardianship, unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

1. To see that Wards are living in the most appropriate environment that addresses each Ward's goals, needs, and preferences subject to limitations of his or her financial resources and availability of government benefits,

a. Professional Guardians must prioritize home or other community-based settings, when not inconsistent with a Ward's goals and preferences.

b. Professional Guardians shall authorize moving Wards to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive

alternative at the time, fulfills the current needs of a Ward, and serves the overall best interest of a Ward.

c. Professional Guardians shall consider the proximity of the setting to those people and activities that are important to Wards when choosing a residential setting.

d. When Professional Guardians consider placement of a Ward in a residential setting, the bases of the decision shall be to minimize the risk of significant impairment to a Ward's physical, mental, or emotional health, to obtain the most appropriate placement possible, and to secure the best treatment for the Ward consistent with Section 744.3215, F.S.

2. To ensure that provision is made for the support, care, comfort, health, and maintenance of Wards, subject to limitations of his or her financial resources and availability of government benefits,

3. To make reasonable efforts to secure for Wards medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize Wards' potential for self-reliance and independence, subject to limitations of his or her financial resources and availability of government benefits; and,

4. To report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services Unit and local law enforcement incidents of abuse, neglect and/or exploitation as defined by state statutes within a reasonable period of time. For purposes of this provision the phrase "reasonable period of time" shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

(13) INITIAL AND ONGOING RESPONSIBILITIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.

(a) With the proper authority, Professional Guardians appointed guardian of the person shall take the following initial steps after appointment:

1. Professional Guardians shall address all issues of Wards under guardianship that require immediate action.

2. Professional Guardians shall meet with Wards as soon after the appointment as is feasible. At the first meeting, Professional Guardians shall:

a. Communicate to the Ward the role of the Professional Guardian,

b. Explain the rights retained by the Ward,

c. Assess the Ward's physical and social situation,

d. Assess the Ward's educational, vocational, and recreational needs,

e. Obtain the Ward's preferences,

f. Assess the support systems available to the Ward; and,

g. Attempt to gather any missing necessary information regarding the Ward.
3. After the first meeting with the Ward, the Professional Guardian shall notify relevant agencies and individuals of the appointment of a Professional Guardian, and shall complete the intake process by gathering information and ensuring that applicable evaluations are completed, if appropriate. The Professional Guardian shall:

a. Obtain a psychological evaluation, if appropriate.

b. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts.

c. Establish contact and communicate with the Professional Guardian of the property and/or any other relevant fiduciary for the Ward.

(b) Professional Guardians appointed guardian of the person shall maintain a separate file for each Ward. The file must include, at a minimum, the following information and documents, if available:

1. The Ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, the purpose of each medication, and allergies to medications,

2. Any legal documents, including the order appointing the guardian and letters of guardianship, involving the Ward,

3. Advance directives,

4. A list of key contacts and the contact information for next of kin,

5. A list of service providers, contact information, a description of services provided to the person, and progress/status reports, 6. A list of all medications the Ward is taking, the dosage, and the name of the doctor prescribing the medication,

7. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,

8. The initial guardianship plan and annual plans; and,

9. Assessments regarding the Ward's past and present medical, psychological, and social functioning,

10. Documentation of the Ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service.

(c) Professional Guardians appointed guardian of the person or one of their professional staff shall visit Wards at least quarterly each year.

1. Professional Guardians appointed guardians of the person, if delegated, shall assess the Ward's physical appearance and condition, and if delegated by the Court, the appropriateness of the Ward's current living situation, and the

continuation of existing services while taking into consideration the Ward's resources, all aspects of social, psychological, educational, direct services, and health and personal needs as well as the need for any additional services.

2. Professional Guardians appointed guardian of the person shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

3. Professional Guardians appointed guardian of the person shall examine all services and all charts, notes, logs, evaluations, and other documents regarding Wards at the place of residence and at any program site to ascertain that the care plan is being properly followed.

4. Professional Guardians appointed guardian of the person shall advocate on behalf of the Ward. Professional Guardians appointed guardians of the person shall assess the overall quality of services provided to Wards and seeking remedies when care is found to be deficient.

5. Professional Guardians appointed guardians of the person shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the Ward's current goals, needs, and preferences, including but not limited to: a. Evaluating the initial annual plan, b. Enforcing residents' rights, legal, and civil rights; and, c. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the Ward.

(d) Professional Guardians appointed guardian of the person shall fully identify, examine, and continue to seek information regarding options available to the Ward that will fulfill the Ward's goals, needs, and preferences.

1. Professional Guardians appointed guardian of the person shall take advantage of available professional assistance in identifying all available options for long term services and support.

2. Sources of professional assistance include, but are not limited to Area Agencies on Aging, Centers for Independent Living, protection and advocacy agencies, Long Term Care Ombudsmen, Developmental Disabilities Councils, Aging and Disability Resource Centers, and community mental health agencies.

(14) DECISION-MAKING BY GUARDIAN OF THE PERSON CONCERNING MEDICAL TREATMENT.

(a) Professional Guardians appointed guardian of the person shall promote, monitor, and maintain the health and well-being of Wards under guardianship pursuant to their powers and duties as guardian, and in accordance with the Ward's available resources.

(b) Professional Guardians appointed guardian of the person shall ensure that all medical care available to the Ward is appropriately provided.

(c) Professional Guardians, in making health care decisions or seeking court approval for such decisions, shall:

1. Maximize the participation of Wards,
2. Acquire a clear understanding of the medical facts,
3. Acquire a clear understanding of the health care options and the risks and benefits of each option; and,

4. Encourage and support Wards in understanding the facts and directing a decision.

(d) Professional Guardians shall use the substituted judgment standard, as defined in subsection (7), with respect to a health care decision, unless a Professional Guardian cannot determine a Ward's prior wishes, or when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health. Professional Guardians shall use the best interest standard with respect to health care decisions when it is not possible or inappropriate to use the substituted judgment standard.

(e) If possible, Professional Guardians shall determine whether a ward, before the appointment of a Professional Guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by a Ward recorded in medical charts. On finding such documents, Professional Guardians shall inform the court and other interested parties of the existing health care documents.

(f) To the extent a Ward cannot participate in the decision-making process, a Professional Guardian appointed guardian of the person shall act in accordance with the Ward's prior general statements, actions, values, and preferences to the extent the Professional Guardian actually knows or should know of them, provided that such preferences are in the Ward's best interest.

(g) If a Ward's preferences are unknown and unascertainable, a Professional Guardian appointed guardian of the person shall act in accordance with information received from professionals and persons who demonstrate interest in the Ward's welfare to determine the Ward's best interests.

(h) Absent an emergency or a Ward's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates a Ward's wishes with respect to a medical intervention, a Professional Guardian appointed guardian of the person and has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria contained in subsections (6) and (7).

(i) In the event of an emergency, a Professional Guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on an assessment of the criteria contained in subsections (6) and (7), within the time allotted by the emergency.

(j) Professional Guardians appointed guardian of the person shall seek a second medical opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to a Ward. Professional Guardians shall obtain a second opinion from a licensed physician.

(k) Professional Guardians appointed guardian of the person shall communicate with the treating medical provider before authorizing or denying any treatment or procedure that has been previously approved.

(l) Professional Guardians appointed guardian of the person shall, in accordance with Section 765.1103(1), F.S., seek to ensure that palliative care is incorporated into all health care, unless not in accordance with a Ward's preferences and values.

(15) DECISION-MAKING CONCERNING WITHHOLDING AND WITHDRAWAL OF MEDICAL TREATMENT.

(a) If a Ward expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment, a Professional Guardian shall follow the wishes of the Ward. If the Ward's past or current wishes are in conflict with each other or are in conflict with what the Professional Guardian feels is in the best interest of the Ward, the Professional Guardian shall have this ethical dilemma submitted to the court for direction.

(b) When making this decision on behalf of a Ward, Professional Guardians shall gather and document information as outlined in subsection (6), and shall follow subsection (7).

(16) CONFLICT OF INTEREST: ANCILLARY AND SUPPORT SERVICES.

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing, when addressing the needs of Ward's under guardianship. A conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving, or adverse to the position or best interest of a Ward. Self-dealing arises when a Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of the Ward.

(b) Guidelines relating to specific ancillary and support service situations:

1. Professional Guardians may not directly provide housing, medical, or other direct services to a Ward unless the Ward is a Family Member of the Professional Guardian or approved by the court.

a. Professional Guardians shall coordinate and assure the provision of all necessary services to Ward's, other than guardianship services, rather than providing those services directly.

b. Professional Guardians shall be independent from all service providers and must challenge inappropriate or poorly delivered services and advocate on behalf of their Ward's.

c. An exception to subsection (16), shall apply when a Professional Guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services provided that the exception is in the best interest of the Ward. Approval for the exception must be documented and approved by the court.

2. A Professional Guardian who is not a family member of the Alleged Incapacitated Person or acting in an official capacity has a public guardian appointed pursuant to Section 744.2006, F.S., may act as a petitioner for the initial appointment of a guardian only when no other entity is available to act, provided all alternatives have been exhausted.

3. Professional Guardians may not employ their friends or family to provide services for a profit or fee unless no alternative is available and the Professional Guardian discloses this arrangement to the court and the services are provided at the going market rate.

4. Professional Guardians shall neither solicit nor accept incentives from service providers.

5. Professional Guardians shall consider various ancillaries or support service providers and select the providers that best meet the needs of the Ward.

6. Professional Guardians who are attorneys, or employ attorneys, may provide legal services to Ward's only when doing so best meets the needs of the Ward's and is approved by the court following full disclosure of the potential for conflict of interest. Professional Guardians who are attorneys shall ensure that the services and fees are differentiated and are reasonable.

7. Professional Guardians may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to a Ward under the guardianship, and shall disclose such transactions to the Court and obtain prior court approval.

(17) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PROPERTY.

(a) Professional Guardians appointed guardian of the property shall have the following duties and obligations to Ward's under guardianship; unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

(b) When making decisions Professional Guardians appointed guardian of the property shall:

1. Give priority to the goals, needs, and preferences of the Wards; and,
2. Weigh the costs and benefits to the estate.

(c) Professional Guardians appointed guardian of the property shall consider the current wishes, past practices, and evidence of likely choices of their wards. If substantial harm to a Ward's physical, mental, or emotional health would result or there is no evidence of likely choices, Professional Guardians appointed guardian of the property shall consider the best interests of the Ward.

(d) Professional Guardians shall assist and encourage Wards to participate in decisions to the extent they are capable and not inconsistent with court order.

(e) Professional Guardians appointed guardian of the property shall provide management of Wards' property and shall supervise all income and disbursements of the Ward.

(g) Professional Guardians appointed guardian of the property shall manage the estate only for the benefit of the Ward or as directed by the Court.

(h) Professional Guardians appointed guardian of the property shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate during the time of the Professional Guardian's appointment by the Court.

(i) Professional Guardians appointed guardian of the property shall keep estate money separate from their personal money.

(j) Professional Guardians appointed guardian of the property shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise to manage the estate.

(k) If possible, Professional Guardians appointed guardian of the property shall determine if a will exists and obtain a copy to determine how to manage estate assets and property as their Wards would have done when they had capacity.

(l) Professional Guardians appointed guardian of the property shall report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services and local law enforcement incidents of abuse, neglect, and/or exploitation within a reasonable period of time under the circumstances. For purposes of this provision the phrase "reasonable period of

time” shall mean the time period in which a reasonably prudent person, under the same or similar circumstances, would report incidents of abuse, neglect and/or exploitation to the Office of Public and Professional Guardians and other appropriate authorities.

(18) PROFESSIONAL GUARDIAN OF THE PROPERTY: INITIAL AND ONGOING RESPONSIBILITIES

(a) With the proper authority, the initial steps after appointment as Professional Guardian of the property are as follows:

1. Professional Guardians shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
 - a. Professional Guardians shall ascertain the income, assets, and liabilities of the Ward.
 - b. Professional Guardians shall ascertain the goals, needs, and preferences of the Ward.
2. Professional Guardians shall meet with Wards under guardianship as soon after the appointment as feasible. At the first meeting, Professional Guardians shall:
 - a. Communicate to the Ward the role of the Professional Guardian,
 - b. Outline the rights retained by the Ward and the grievance procedures available,
 - c. Assess the previously and currently expressed wishes of the Ward and evaluate them based on current acuity; and,
 - d. Attempt to gather from the Ward any necessary information regarding the estate.
3. Professional Guardians shall file all tax returns, 1099s, and other forms on behalf of their wards as required by the Internal Revenue Service.
4. Professional Guardians shall develop and implement a budget for the management of income and assets that corresponds with the care plan for the Ward, if any, and aim to address the goals, needs, and preferences of the Ward. Professional Guardians of the property and the Professional Guardian of the Person (if one exists), or other health care decision-maker, shall communicate regularly and coordinate efforts with regard to the care and budget, as well as other events that might affect the Ward.
 - a. The budget shall include a listing of all of the Ward’s known assets, monthly income and whether the Ward’s finances are sufficient for the services the Ward needs, and are flexible enough to deal with the changing status of the Ward. The budget shall also include a listing of all of the Ward’s recurring monthly expenses, including but not limited to housing, clothing, medical, health insurance, entertainment, and transportation costs.

- b. Professional Guardians shall prioritize the well-being of Wards over the preservation of the estate.
 - c. Professional Guardians shall maintain the goal of managing, but not necessarily eliminating, risks
- .
5. Professional Guardians shall assess the feasibility of pursuing all public and insurance benefits for which Wards may be eligible.
 6. Professional Guardians shall document the management of the estate and the carrying out of any and all duties required by statute or regulation.
 7. Professional Guardians shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by Wards known to the Professional Guardian and must be in accordance with Section 744.365, F.S., and Florida Probate Rule 5.620.
 8. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable and consistent with Florida Probate Rule 5.696.
 9. Professional Guardians shall oversee the disposition of Wards' assets subject to the Professional Guardian's control to qualify Wards for any public benefits program after obtaining Court approval.
 10. On the termination of the guardianship or the death of a Ward, Professional Guardians shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
 11. The Professional Guardian appointed guardian of the property shall maintain a separate file for each Ward. The file must include, at minimum, the following information and documents, if available:
 - a. The Ward's name, date of birth, address, telephone number, Social Security number,
 - b. Any legal documents, including among others the order appointing the guardian and the letters of guardianship, involving the Ward,
 - c. A list of key contacts and the contact information for next of kin,
 - d. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,
 - e. Progress notes and any documentation that reflect contacts made and work performed regarding the Ward, including the date, time and activity,
 - f. The initial inventory and annual accountings; and,
 - g. Documentation of any goals or preferences expressed by the Ward that

have been made known to the Professional Guardian and would require the expenditure of the Ward's assets in excess of \$1,000.00, and the date, time, location and individuals present when the goal or preference was expressed by the Ward.

12. Professional Guardians shall, when appropriate, open a burial trust account and/or make funeral arrangements for Wards.

(b) Professional Guardians appointed guardian of the property shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

(19) PROPERTY MANAGEMENT.

(a) When disposing of a Ward's assets, pursuant to Section 744.441, F.S., a Professional Guardian appointed guardian of the property must seek court approval and notify interested persons as required by Chapter 744, F.S.

(b) In the absence of evidence of a Ward's wishes before the appointment of a Professional Guardian, Professional Guardians appointed guardian of the property, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of a ward, or an interest in that property, unless doing so is in the best interest of the Ward.

(c) In considering whether to dispose of a Ward's property, Professional Guardians appointed guardian of the property shall consider the following:

1. Whether disposing of the property will benefit or improve the life of the Ward,
2. The likelihood that the Ward will need or benefit from the property in the future,
3. The previously expressed or current desires of the Ward with regard to the property to the extent that they are known to the

Professional Guardian,

4. The provisions of the Ward's estate plan as it relates to the property, if any,
5. The tax consequences of the transaction,
6. The impact of the transaction on the Ward's entitlement to public benefits,
7. The condition of the entire estate,
8. The ability of the Ward to maintain the property,
9. The availability and appropriateness of alternatives to the disposition of the property,
10. The likelihood that property may deteriorate or be subject to waste,
11. The benefits versus the liability and costs of maintaining the property; and,
12. Any other factor that may be relevant to the disposition of the Ward's property.

(d) Professional Guardians appointed guardian of the property shall consider the necessity for an independent appraisal of real and personal property.

(e) Professional Guardians appointed guardian of the property shall obtain insurance coverage, as appropriate, for property in the estate.

(20) CONFLICT OF INTEREST: ESTATE, FINANCIAL, AND BUSINESS SERVICES.

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing when addressing the needs of Wards under guardianship. Impropriety or conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of a Ward. Self-dealing arises when the Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of a Ward.

(b) Professional Guardians appointed guardians of the property shall not commingle personal or program funds with the funds of Wards.

(c) With the exception of funds associated with Wards served by offices of public guardian established pursuant to Section 744.2006, F.S., Professional Guardians appointed guardians of the property shall not consolidate or maintain Wards' funds in joint accounts or with the funds of other Wards.

(d) Professional Guardians appointed guardian of the property may not sell, encumber, convey, or otherwise transfer a Ward's real or personal property or any interest in that property to himself or herself, a spouse, a family member, a friend, a coworker, an employee, a member of the board of the agency or corporate Professional Guardian, an agent, or an attorney, or any corporation or trust in which the Professional Guardian, a friend of the Professional Guardian or a family member of the professional guardian has a substantial beneficial interest.

(e) Professional Guardians appointed guardian of the property may not loan money or objects of worth from a Ward's estate unless specific prior approval is obtained from the court.

(f) Professional Guardians appointed guardian of the property may not use a Ward's income and assets to directly support or directly benefit other individuals unless specific prior approval is obtained from the court.

(g) Professional Guardians may not borrow funds from a Ward.

(h) Professional Guardians may not lend funds to a Ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the Ward's benefits, and the transaction is approved by the court. (i) Professional Guardians may not profit from any transactions made on behalf of a Ward's estate at the expense of the estate, nor

may the Professional Guardian compete with the estate, unless prior approval is obtained from the court. This provision shall not preclude the payment of fees to a Professional Guardian from the assets of a Ward that are associated with the performance of the duties of a guardianship.

(j) Professional Guardians shall not give anything of monetary value associated with a guardianship referral.

(21) TERMINATION AND LIMITATION OF PROFESSIONAL GUARDIANSHIP.

(a) Professional Guardians shall assist Wards under guardianship to develop or regain the capacity to manage their personal and financial affairs, if possible.

(b) Professional Guardians shall seek termination or limitation of the guardianship in the following circumstances:

1. When the Professional Guardian believes a Ward has developed or regained capacity in areas in which he or she was found incapacitated by the court,
2. When less restrictive alternatives exist that have not been previously addressed by the Court exist,
3. When a Ward expresses the desire to challenge the necessity of all or part of the guardianship,
4. When a Ward has died, or
5. When a guardianship no longer benefits the Ward; and,
6. When the Ward cannot be located after a diligent search.

(22) PROFESSIONAL GUARDIANSHIP SERVICE FEES.

(a) All fees related to the duties of the guardianship must be reviewed and approved by the court. Professional Guardians shall

apprise the court of all fees paid to Professional Guardians relating to guardianship services, including fees paid from sources outside of the guardianship. Fees must be reasonable and be related only to guardianship duties. Petitions for Professional Guardian fees must include the source of payment (e.g. guardianship, trust, etc.), if known.

(b) Fees or expenses charged by a Professional Guardian shall be documented through billings maintained by the Professional Guardian as required by Section 744.108, F.S., which shall clearly and accurately state:

1. The date and time spent on a task,
2. The duty performed
3. The expenses incurred,
4. The third parties involved; and,
5. The identification of the individual who performed the duty (e.g., guardian, staff, volunteer).

(c) All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

(23) MANAGEMENT OF MULTIPLE PROFESSIONAL GUARDIANSHIP CASES.

Professional Guardians shall limit his or her caseload to allow the Professional Guardian to properly carry out his or her duties for each Ward within statutory guidelines.

Rulemaking Authority 744.2001(2)(b) FS. Law Implemented 744.2001(2)(b) FS. History—New 6-23-17.

58M-2.011 Disciplinary Action and Guidelines.

(1) Purpose. Pursuant to Section 744.20041, F.S., the Office of Public and Professional Guardians provides disciplinary guidelines in this rule for applicants or guardians over whom it has oversight. The purpose of this rule is to notify applicants and guardians of the range of penalties which will routinely be imposed, unless the Office of Public and Professional Guardians finds it necessary to deviate from the guidelines for the stated reasons given in this rule. The range of penalties are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violations may result in a higher penalty. Each range includes the lowest and highest penalties that may be imposed for that violation. For applicants, all offenses listed in the Disciplinary Guidelines are sufficient for refusal to certify an application for registration. The Office of Public and Professional Guardians may find it necessary to deviate from the guidelines for the reasons stated in subsection (3), of this rule.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and guardians, the Office of Public and Professional Guardians shall act in accordance with guidelines and shall impose a penalty within a range corresponding to the violations set forth in form DOEA/OPPG Form 003, Office of Public and Professional Guardians Disciplinary Guidelines (February 2017), incorporated herein by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-07914>, unless the Office of Public and Professional Guardians finds it necessary to deviate from the guidelines for the stated reasons given in subsection (3), of this rule.

(3) The Office of Public and Professional Guardians shall take into consideration the danger to the public; the number of repetitions of offenses; the length of time since the date(s) of violation; the number of disciplinary actions taken against the guardian; the length of time the guardian has practiced; the actual damage, physical or otherwise, to the ward; the deterrent effect of the penalty imposed;

any efforts for rehabilitation; and any other mitigating or aggravating circumstances in determining the appropriate disciplinary action to be imposed.

Final words on comparison among 4 states.

When one reviews the specific state laws, some states include provisions of ethics and standards separately while other do not. However one cannot overlook the crossover between ethics and standards. Where ethics and standards are codified in law, the fiduciary is not only held to actionable legal ethics, but also standards

Conclusion:

Fiduciaries have a great deal of responsibility in caring for their ward's/conservatee's when serving your clients. Exercising good ethical behavior also complies with legal standards where the states have codified both.

Ethics Self Check

- () Understand the term fiduciary.
- () Understand how ethical decision-making relates to character.
- () Be aware of any state or local rules relating to ethics and legal standards for fiduciaries.
- () Understand that fiduciaries are expected to follow any state standard with identifies standard of care
- () Review all principles to understand the core elements of ethical decision-making.
- () A fiduciary may be removed for conflicts of interest according to your state's standards.
- () Be aware of the National Guardianship Association Code of Ethics.