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Recording Date – July 20, 2017

Recording Availability – March 30, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	Thursday, July 20, 2017	12:00 PM to 1:15 PM	Guardianship and Resident Rights in LTC Facilities

AGENDA

12:00 PM Introduction

12:10 PM Presentation: ‘Guardianship and Resident Rights in LTC Facilities’, by John Ficker, Adult Family Home Council of Washington State; Dan Smerken, Smerken Consulting/Eldercare Services; and Mike Anbesse, DSHS - Aging and Long-Term Support Administration

The Role of the Guardian

- Review legislative intent of the guardianship statute
- Review of civil rights that are modified and those unaffected by incapacity determination.
- Role of the Guardian - compare role of guardian, attorney in fact, family member.
- Case studies in the practical application of guardianship services to those in state licensed residential settings.

The Role of the Ombudsman

- Introduction to Long-Term Care Ombudsman Program
- Role and Authority of LTC Ombuds
- Resident Rights laws in the context of guardianship
- Ombudsman Program laws in the context of guardianship

1:15 PM Adjourn

SPEAKER BIOGRAPHY:

John Ficker, Adult Family Home Council of Washington State – John has vast experience in home and community based care. Prior to coming to the Adult Family Home Council in 2013, he worked at the Health Care Authority as an expert in the new ProviderOne payment system. For seven years prior, he worked with DSHS to develop and maintain policy regarding residential programs including adult family homes. As the former deputy director of Senior Services for South Sound, John has experienced providing direct care to clients, developing caregiver training, nonprofit management, operating a small business, and working to inform the state legislature of the critical role long term care providers hold.

Dan Smerken, Smerken Consulting/Eldercare Services – Dan Smerken, MA, LPN, is a professional fiduciary and Geriatric Care Manager. Based in Olympia, Washington, Dan serves clients in King, Pierce, Thurston, Lewis, Grays Harbor, Mason, and Pacific Counties.

Dan currently serves on the board of the National Guardianship Association as Secretary/Treasurer and as past- president of the Washington Association of Professional Guardians (WAPG). Dan also is a former board chair of the Better Business Bureau of Alaska, Oregon and Washington.

Dan's past work experience includes the development and management of federally-funded senior housing, licensed long term care (ALF, AFH, SNF), and community-based programs for older adults such as home health, hospice, and the Program for All-Inclusive Care for the Elderly (PACE).

Dan holds a certificate of nursing from the John A. Logan College, a Bachelors of Arts in health and human services from the Evergreen State College and a Master's degree in social science with an emphasis in gerontology and family /:organizational systems from Pacific Lutheran University. He also holds a graduate certificate in geriatric care management from the University of Florida and certificates in guardianship, gerontology, geriatric mental health, mediation, and paralegal studies from the University of Washington.

Mike Anbesse, DSHS - Aging and Long-Term Support Administration – Mike Anbesse, DSHS Residential Care Services Regional Administrator for Region 2, covering five counties including King County and north. RCS is responsible for the licensing and oversight of adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, and certified community residential services and supports. Their mission is to promote and protect the rights, security and well-being of individuals living in these licensed or certified residential settings.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

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To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at www.mywsba.org/.
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

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Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, "The activity has been added to your roster."

Guardianship Decision Making and Licensed Residential Settings



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RCW 11.88.005

Legislative intent.

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

What Rights CANNOT Be Transferred in Guardianship?

- A guardian may NOT decide to place an individual in a home/facility against his or her will
- A guardian may NOT consent to the commitment of an incapacitated person for mental health treatment
- A guardian may ask a court to order an involuntary commitment
- A guardian may NOT sign a will on behalf of an individual
- Guardianship does NOT take away a person's right to freedom of expression, religion, or assembly
- Guardianship does NOT take away a person's right to privacy from government or protection from illegal search and seizure.
- The right to vote may only be taken away if it is shown that the individual is incapable of making a choice. The individual does not need to be able to write, read, or make an informed choice (many people would say that there are many very well educated and perfectly capable people who make ill-informed voting decisions on ballot measures all the time). This right is instrumental to our democracy and it is a high burden to take it away
- Guardianship does NOT take away an incapacitated person's right to swear to an oath as they choose.
- Guardianship does NOT take away an incapacitated person's rights as a victim
- Guardianship does NOT take away an incapacitated person's rights if they are accused of a crime

Civil Rights and Guardianship

Source:

Analysis by Megan Farr and Katie Hurt

<https://www.dropbox.com/sh/gyzl80zkzvrtqn7/AAAl81IRUgmWIV06GhqDgkD Va?dl=0>

Surrogacy Comes in Many Flavors

- A guardian can be a family member (Majority) or a Certified Professional Guardian (270 CPG's statewide)
- A guardian's role can be limited (e.g. medical decisions only), and can serve multiple roles (Representative Payee, Trustee, Attorney in Fact)
- Often times these other roles are mistaken as guardianships when no guardianship exists. AFH owners, professionals, and public may use the term "guardianship" generically when no court intervention exists.

Guardianship Decision Making Standards

- If a person under guardianship can express a preference, they retain decision making authority unless restricted by the court or unless the decision would result in harm.
- If a person under guardianship cannot express a preference, the primary decision making standard is Substituted Judgement.
- A Best Interest decision making standard is only utilized if the surrogate cannot identify the historical preference of the person under guardianship when they had capacity.

Relevant CPG Standards of Practice

- https://www.courts.wa.gov/content/publicUpload/CPG/20131014_SOP_Regulations.pdf

Case Studies