

OFFICE OF THE PUBLIC ADMINISTRATOR
OFFICE OF THE PUBLIC GUARDIAN
POLICY AND PROCEDURE

Draft Prepared by Lucille Lyon

SUBJECT: ETHICS	POLICY NO: 100	EFFECTIVE DATE:	PAGE: 1 of 9
APPROVED BY:	SUPERCEDES: None	ORIGINAL ISSUE DATE:	DISTRIBUTION LEVEL: All Staff

PURPOSE:

1.0 To provide statutory rules on ethics.

REVISION HISTORY:

2.0 None

POLICY:

3.0 All Public Administrator and Public Guardian staff are required to read this policy and sign acknowledgement of this policy.

3.2 All new employees are required to attend a fiduciary ethics training within six (6) months of employment.

3.3 Staff of the Public Administrator/Public Guardian office are required to attend a training at least once every two years. The training must include elements of this policy and case discussion.

DEFINITIONS:

4.0 “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.” (Government Code §§ 27443, 27443.5)

4.1 “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 Probate § 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 Probate § 1500 or 1501, the court shall take that facts into consideration. “(Probate Code § 2650)

PROCEDURES:

5.0 Upon employment with the Office of the Public Administrator/Public Guardian, the immediate supervisor is to review this policy and obtain a signature from the employee that he/she has received and read this policy.

5.1 All PA/PG must follow the ethical standards presented in this policy under Definitions, Attachment “A” and “B”.

5.2 Any violations of this policy are to be reported to the Chief Deputy Public Guardian to determine what actions should be taken.

RESPONSIBILITY:

6.0 All Public Administrator and Public Guardian Staff

AUTHORITY:

7.0 Government Code § 27443, 27443.5
Penal Code § 1170
Probate Code § 2650
California Code of Regulations § 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484 (State Rules of the Court, Rule 7.1059)

FORMS:

8.0 Acknowledgement of Ethics Policy 100.0

Attachment A

California Code of Regulations

The Code of Ethics for Fiduciaries is found under the California Code of Regulations Article 4. Under this Article there are eight (8) Sections:

Section 4470. General Principles

- (a) A licensee's fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:
 - (1) A licensee's relationship to a conservatee when acting as a court appointed conservator.
 - (2) A licensee's relationship to a ward when acting as a court appointed guardian;
 - (3) A licensee's relationship to a principal when acting under a durable power of attorney; and,
 - (4) A licensee's relationship to a beneficiary when acting as a trustee.
- (b) The licensee shall comply with all local, state, and federal laws, regulations, and requirements developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.
- (c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.
- (d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.
- (e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.
- (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.
- (g) Notwithstanding any other provision of law, any expense incurred by the licensee for the delivery of services that are provided to, or arranged, for, the consumer by the licensee, including attorney fees or fees to the licensee for services, shall be considered reasonable if approved by the court.

Section 4472. Decision Standards

- (at) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, or agent under durable power of attorney for health care or for finances.
- (b) The licensee shall provide the consumer with every reasonable opportunity to exercise those individual choices that the consumer is capable of exercising.
- (c) When the licensee is making decisions on behalf of the consumer, the licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions, and shall make decisions therefore predicated on the ascertained desires of the consumer, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expertise on the estate.

(d) If after every reasonable good faith effort, the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions that are in the best interest of the consumer.

(e) Decisions made on behalf of the consumer shall take into consideration all known ethnic religious, social and cultural values of the consumer whenever possible.

Section 4474. Confidentiality.

(at) The licensee shall closely guard against the disclosure of personal information regarding the consumer except when such disclosure is required by law or necessary to protect the best interest of the consumer.

(b) Disclosure of consumer information shall be limited to what is lawful necessary and relevant to the issue being addressed.

Section 4476. Conflict of Interest

(at) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.

(b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonable could be perceived as self-serving or adverse to the best interest of the consumer.

(c) The licensee shall protect the rights of the consumer and the estate against infringement by third parties.

Section 4478 Residential Placement

(at) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall be informed and aware, and consider the options and alternatives available when establishing the consumer's place of residence.

(c) The licensee shall make every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions when establishing the consumer's residence, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) If any every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall select the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(e) The licensee shall not remove the consumer from his or her home or separate the consumer from family and friends unless such removal is appropriate and in the best interest of the consumer.

(if) The licensee shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed placement of the consumer represents the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(g) The licensee shall monitor the placement of the consumer on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

(h) The licensee shall take all action necessary to protect the consumer from financial and/or physical harm or abuse.

Section 4480 Care, Treatment and Services

(a) The provisions under this section shall apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall protect the personal and pecuniary interests of the consumer.

(c) The licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions regarding all care, treatment, or services, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions regarding care, treatment, and services that in the best interest of the consumer.

(d) If after every reasonable good faith effort, the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions regarding care, treatment, and services that are in the best interest of the consumer.

(e) The licensee shall be cognizant of his or her own limitation of knowledge, and shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed care, treatment, and services are appropriate and in the best interest of the consumer.

(f) The licensee shall monitor the care, treatment, and services on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that in the best interest of the consumer.

Section 4482. Management of the Estate

(a) The licensee shall protect the assets of the estate.

(b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.

(f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

Section 4484 Limitations or Elimination of Fiduciary Powers; Restoration of Capacity; Termination of Fiduciary Relationship.

(a) When appropriate and in the best interest of the conservatee, licensed conservators under the Act shall not oppose and, in appropriate circumstances shall seek, limitations on the licensee's powers or authority to act, elimination of unnecessary or no-longer necessary powers, or termination of the proceeding and restoration of the conservatee's legal capacity.

(b) In all fiduciary relationship subject to this Act, when appropriate and in the best interest of the consumer, the licensee shall take all reasonable steps to facilitate termination of the fiduciary.

(c) In all fiduciary relationships subject to the Act, the licensee shall not oppose or interfere with efforts to terminate the licensee's fiduciary relationship with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer. (State Rules of the Court, Rule 7.1059)

Attachment B

California Association of Public Administrators, Public Guardians and Public Conservators

Chapter 5, Code of Ethics of the Standards and Certification Committee Plan last approved on March 12, 2008 is as follows:

“Public Administrators, Public Guardians, and Public Conservators shall:

Recognize that care of the client is a prime responsibility and at all times strive to provide quality services consistent with available resources and applicable laws.

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

Act as advocate in safeguarding the clients’ civil and legal rights.

Safeguard the clients’ right to privacy by judiciously protecting information of a confidential nature.

Observe, at all times, existing local, state and federal laws as a minimum guide for the fulfillment of responsibilities to clients.

Maintain an attitude of fairness, honesty and impartiality in all professional activities and relationships.

Manifest personal integrity, and assume responsibility and accountability for individual judgments and actions, and eliminate any possibility of conflict of interest.

Protect, at all times and under all circumstances, the position of trust vested in the Office of the Public Administrator, Public Guardian, and Public Conservator.

Maintain competence in professional skills.

Cooperate with other entities engaged in, or supportive of, collateral services to promote quality programs.

Participate in activities that contribute to the ongoing development of the profession’s body of knowledge.

Participate in the Associations efforts to implement and improve the standards of the profession.

Enforce, through the Association, the policies established for the welfare of the clients and the continued effectiveness of the profession.

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