

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Children, Families &
2 Seniors Subcommittee
3 Representative Ahern offered the following:

Amendment (with title amendment)

Between lines 433 and 434, insert:

Section 744.20041 is created to read:

744.20041 Grounds for discipline; penalties; enforcement.-

(1) The following acts by a professional guardian shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of guardianship.

(b) Violating any rule governing guardians or guardianships adopted by the Office of Public and Professional Guardians.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a

Amendment No. 2

19 crime in any jurisdiction which relates to the practice of, or
20 the ability to practice as a professional guardian.

21 (d) Failing to comply with the educational course
22 requirements contained in s. 744.2003.

23 (e) Having a registration, license or the authority to
24 practice a regulated profession revoked, suspended, or otherwise
25 acted against, including the denial of registration or
26 licensure, by the registering or licensing authority of any
27 jurisdiction, including its agencies or subdivisions, for a
28 violation under Florida law. The registering or licensing
29 authority's acceptance of a relinquishment of registration or
30 licensure, stipulation, consent order, or other settlement,
31 offered in response to or in anticipation of the filing of
32 charges against the registration or license, shall be construed
33 as action against the registration or license.

34 (f) Knowingly filing a false report or complaint with the
35 Office of Public and Professional Guardians against another
36 guardian.

37 (g) Attempting to obtain, obtaining, or renewing a
38 registration or license to practice a profession by bribery, by
39 fraudulent misrepresentation, or as a result of an error by the
40 Office of Public and Professional Guardians which error is known
41 and not disclosed to the Office of Public and Professional
42 Guardians.

43 (h) Failing to report to the Office of Public and
44 Professional Guardians any person who the professional guardian
45 knows is in violation of this chapter or the rules of the Office
46 of Public and Professional Guardians.

Amendment No. 2

47 (i) Failing to perform any statutory or legal obligation
48 placed upon a professional guardian.

49 (j) Making or filing a report or record which the
50 professional guardian knows to be false, intentionally or
51 negligently failing to file a report or record required by state
52 or federal law, or willfully impeding or obstructing another
53 person's attempt to do so. Such reports or records shall include
54 only those that are signed in the guardian's capacity as a
55 professional guardian.

56 (k) Using the position of guardian for the purpose of
57 financial gain by a guardian or a third party other than the
58 funds awarded to the guardian by the court pursuant to s.
59 744.108.

60 (l) Violating a lawful order of the Office of Public and
61 Professional Guardians, or failing to comply with a lawfully
62 issued subpoena of the Office of Public and Professional
63 Guardians.

64 (m) Improperly interfering with an investigation or
65 inspection authorized by statute, rule, or with any disciplinary
66 proceeding.

67 (n) Using the guardian relationship to engage or attempt
68 to engage the ward, or an immediate family member or
69 representative of the ward, in verbal, written, electronic, or
70 physical sexual activity.

71 (o) Failing to report to the Office of Pubic and
72 Professional Guardians in writing within 30 days after being
73 convicted or found guilty of, or entered a plea of nolo
74 contendere to, regardless of adjudication, a crime in any
75 jurisdiction.

Amendment No. 2

76 (p) Being unable to perform the functions of a guardian
77 with reasonable skill by reason of illness or use of alcohol,
78 drugs, narcotics, chemicals, or any other type of material or as
79 a result of any mental or physical condition.

80 (q) Failing to post and maintain a blanket fiduciary bond
81 pursuant to the requirements for such bond in s. 744.2003.

82 (r) Failing to maintain all records pertaining to a
83 guardianship for a period of time after the court has closed the
84 guardianship matter.

85 (s) Violating any provision of this chapter or any rules
86 adopted pursuant thereto.

87 (2) When the Office of Public and Professional Guardians
88 finds any professional guardian guilty of the grounds set forth
89 in subsection (1), it may enter an order imposing one or more of
90 the following penalties:

91 (a) Refusal to register an applicant for registration as a
92 professional guardian.

93 (b) Suspension or permanent revocation of a professional
94 guardian's registration.

95 (c) Issuance of a reprimand or letter of concern.

96 (d) Requirement that the professional guardian undergo
97 treatment, attend continuing education courses, submit to
98 reexamination, or satisfy any terms which are reasonably
99 tailored to the violations found.

100 (e) Require the professional guardian pay restitution of
101 any funds obtained, disbursed or obtained through a violation of
102 any statute, rule or other legal authority to a ward or the
103 ward's estate, if applicable.

Amendment No. 2

104 (f) Requirement that the professional guardian undergo
105 remedial education.

106 (3) In determining what action is appropriate, the Office
107 of Public and Professional Guardians must first consider what
108 sanctions are necessary to safeguard wards and protect the
109 public. Only after those sanctions have been imposed may the
110 Office of Public and Professional Guardians consider and include
111 in the order requirements designed to mitigate the circumstances
112 and rehabilitate the professional guardian.

113 (4) The Office of Public and Professional Guardians of
114 the Department of Elderly Affairs shall adopt by rule and
115 periodically review the disciplinary guidelines applicable to
116 each ground for disciplinary action which may be imposed by the
117 Office of Public and Professional Guardians pursuant to this
118 chapter.

119 (5) It is the intent of the Legislature that the
120 disciplinary guidelines specify a meaningful range of designated
121 penalties based upon the severity and repetition of specific
122 offenses and that minor violations be distinguished from those
123 which endanger the health, safety, or welfare of the ward or the
124 public; that such guidelines provide reasonable and meaningful
125 notice to the public of likely penalties which may be imposed
126 for proscribed conduct; and that such penalties be consistently
127 applied by the Office of Public and Professional Guardians.

128 (6) The Office of Public and Professional Guardians of the
129 Department of Elderly Affairs shall by rule designate possible
130 mitigating and aggravating circumstances, if applicable, and the
131 variation and range of penalties permitted for such
132 circumstances.

Amendment No. 2

133 (a) The administrative law judge, in recommending
134 penalties in any recommended order, must follow the disciplinary
135 guidelines established by the Office of Public and Professional
136 Guardians and must state in writing any mitigating or
137 aggravating circumstances upon which a recommended penalty is
138 based, if such circumstances cause the administrative law judge
139 to recommend a penalty other than that provided in the
140 disciplinary guidelines.

141 (b) A specific finding in the final order of mitigating or
142 aggravating circumstances shall allow the Office of Public and
143 Professional Guardians to impose a penalty other than that
144 provided for in the disciplinary guidelines.

145 (8) In addition to, or in lieu of, any other remedy or
146 criminal prosecution, the Office of Public and Professional
147 Guardians may file a proceeding in the name of the state seeking
148 issuance of an injunction or a writ of mandamus against any
149 person who violates any of the provisions of this chapter, or
150 any provision of law with respect to professional guardians or
151 the rules adopted pursuant thereto.

152 (9) Absent a contrary determination pursuant to chapter
153 120, if the Office of Public and Professional Guardians
154 determines that revocation of a professional guardian's
155 registration is the appropriate penalty, the revocation shall be
156 permanent.

157 (10) If the office of Public and Professional Guardians
158 makes a final determination to suspend or revoke the
159 professional guardian's registration, it must provide the
160 determination to the court of competent jurisdiction for any

Amendment No. 2

161 guardianship case to which the professional guardian is
162 currently appointed.

163 (11) The purpose of this section is to facilitate uniform
164 discipline for those actions made punishable under this section
165 and, to this end, a reference to this section constitutes a
166 general reference under the doctrine of incorporation by
167 reference.

168 (12) The Office of Public and Professional Guardians
169 shall adopt rules to administer the requirements of this
170 section.
171

172 -----

173 **T I T L E A M E N D M E N T**

174 Remove line 45 and insert:

175 Elderly Affairs to adopt rules; creating s. 744.20041;
176 establishing grounds for discipline of professional guardians by
177 the Office of Public and Professional Guardians; establishing
178 the penalties the office may order when a professional guardian
179 is guilty of a violation; establishing the procedures for
180 determining whether a professional guardian is guilty of a
181 violation and what sanction is appropriate; setting forth
182 legislative intent; directing the office and Department of
183 Elderly Affairs to adopt rules; renumbering and