

SENATE, No. 2879

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)

SYNOPSIS

Revises requirements concerning disqualification from registration as, and duties of, a professional guardian.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning professional guardians and amending various
2 parts of the statutory law.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 3 of P.L.2005, c.370 (C.52:27G-34) is amended to
8 read as follows:

9 3. a. In addition to the disqualification from registration as a
10 professional guardian pursuant to section 6 of this act, a person is
11 ineligible for registration as a professional guardian or, if
12 registered, may have his registration suspended or revoked pursuant
13 to section 12 of this act, if the person:

14 (1) is an attorney who has been disbarred or suspended from the
15 practice of law;

16 (2) was engaged in a profession or occupation for which the
17 person was licensed, certified or registered by a board or other
18 authorized entity in the State and his license, certification or
19 registration was suspended or revoked by the applicable board or
20 other authorized entity of the profession or occupation;

21 (3) has a criminal conviction or has been found to be civilly
22 liable for any matter involving moral turpitude, abuse, neglect,
23 fraud, misappropriation, misrepresentation, theft or conversion;

24 (4) lacks financial responsibility to serve as a registered
25 professional guardian, as determined by the Office of the Public
26 Guardian for Elderly Adults;

27 (5) is found to have committed abuse, neglect or exploitation of
28 another person;

29 (6) is the subject of any other disciplinary decision or civil
30 adjudication that would prohibit the person by law from providing
31 services to children or vulnerable adults;

32 (7) fails to fulfill the initial training or biennial continuing
33 education courses pursuant to this act;

34 (8) misrepresents, conceals or falsifies information on the
35 registered guardian application form or annual renewal form;

36 (9) is found to have committed any act which results in a
37 substantial change in the registered guardian's qualifications to
38 serve as a guardian;

39 (10) engages in conduct which demonstrates unfitness to work
40 as a registered professional guardian, including, but not limited to,
41 persistent or repeated violations of a court order or engaging in any
42 impropriety involving dishonesty, fraud, deceit or
43 misrepresentation;

44 (11) fails to cooperate during the course of an investigation by
45 the Office of the Public Guardian for Elderly Adults or any law
46 enforcement agency;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (12) repeatedly fails to accept pro bono cases when assigned by
2 the court; [or]

3 (13) is the subject of a court order, finding of fact or conclusion
4 of law that indicates:

5 (a) a finding that the professional guardian has violated the
6 guardian's duties to an incapacitated person or his estate;

7 (b) a failure to comply with an order of the court;

8 (c) knowingly or negligently engaging in misconduct which:
9 benefits the professional guardian or another; operates to deceive
10 the court; causes serious or potentially serious injury to a party, the
11 public or the legal system; or causes serious or potentially serious
12 interference with a legal proceeding;

13 (d) endangering an incapacitated person;

14 (e) conduct outside the powers or role of a guardian;

15 (f) a repeated or significant failure to perform guardian
16 responsibilities or a dereliction of fiduciary duties;

17 (g) a failure to file required reports and forms;

18 (h) having engaged in inappropriate billing or fee payment; or

19 (i) malfeasance, nonfeasance or misfeasance; or

20 (14) knowingly engages in any act of self-dealing including, but
21 not limited to, taking advantage of the professional guardian's
22 position in performing guardian responsibilities or acting for the
23 guardian's own interests rather than for the interests of the
24 incapacitated adult.

25 b. A registered professional guardian shall maintain records of
26 all transactions and reports associated with an incapacitated adult in
27 his care and shall be subject to audit or spot-check inspection at any
28 reasonable time, at the discretion of the public guardian and his
29 authorized agents, to enable the public guardian to verify
30 satisfactory operational, fiscal and care management compliance by
31 professional guardians.

32 c. In addition to any other civil or criminal penalty that may
33 apply, any person whose registration has been suspended or revoked
34 pursuant to subsection a. of this section shall be liable for a civil
35 penalty of not less than \$5,000 or more than \$10,000. Such penalty
36 may be imposed by the director and shall be collected by summary
37 proceedings instituted in accordance with the "Penalty Enforcement
38 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

39 d. Penalties assessed pursuant to this section shall be in
40 addition to any other civil or criminal penalties that may be
41 applicable pursuant to law.

42 (cf: P.L.2005, c.370, s.3)

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44 2. N.J.S.3B:12-56 is amended to read as follows:

45 3B:12-56 a. A guardian of the person of a ward is not legally
46 obligated to provide for the ward from his own funds.

47 b. A guardian of the person of a ward is not liable to a third
48 person for acts of the ward solely by reason of the relationship and

1 is not liable for injury to the ward resulting from the wrongful
2 conduct of a third person providing medical or other care, treatment
3 or service for the ward except to the extent that the guardian of the
4 ward failed to exercise reasonable care in choosing the provider.

5 c. If a ward has previously executed a valid power of attorney
6 for health care or advance directive under P.L.1991, c.201
7 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of
8 P.L.1991, c.201 (C.26:2H-57), a guardian of the ward shall act
9 consistent with the terms of such document unless revoked or
10 altered by the court.

11 d. To the extent specifically ordered by the court for good
12 cause shown, the guardian of the person of the ward may initiate the
13 voluntary admission, as defined in section 2 of P.L.1987, c.116
14 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in
15 section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric
16 facility. A ward so admitted shall be entitled to all of the rights of a
17 voluntarily admitted patient, which rights shall be exercised on
18 behalf of the ward by the guardian. The guardian of the ward shall
19 exercise the ward's rights in a manner consistent with the wishes of
20 the ward except to the extent that compliance with those wishes
21 would create a significant risk to the health or safety of the ward. If
22 the wishes of the ward are not ascertainable with reasonable efforts,
23 the guardian of the ward shall exercise the ward's rights in a manner
24 consistent with the best interests of the ward. Notwithstanding the
25 provisions of this section to the contrary, if the ward objects to the
26 initiation of voluntary admission for psychiatric treatment or to the
27 continuation of that voluntary admission, the State's procedures for
28 involuntary commitment pursuant to P.L.1987, c.116 (C.30:4-27.1
29 et seq.) shall apply. If the ward objects to any other decision of the
30 guardian of the ward pursuant to this section, this objection shall be
31 brought to the attention of the Superior Court, Chancery Division,
32 Probate Part, which may, in its discretion, appoint an attorney or
33 guardian ad litem for the ward, hold a hearing or enter such orders
34 as may be appropriate in the circumstances.

35 e. A guardian of the person of a ward has an affirmative duty
36 to take actions that are not abusive, neglectful, or exploitive of the
37 ward, and to act in a manner that is in the ward's best interests
38 when performing or not performing any task relating to the
39 provision of guardianship services to the ward.

40 (cf: P.L.2005, c.304, s.38)

41

42 3. N.J.S.A.3B:12-57 is amended to read as follows:

43 3B:12-57. a. (Deleted by amendment, P.L.2005, c.304.)

44 b. (Deleted by amendment, P.L.2005, c.304.)

45 c. (Deleted by amendment, P.L.2005, c.304.)

46 d. (Deleted by amendment, P.L.2005, c.304.)

47 e. (Deleted by amendment, P.L.2005, c.304.)

1 f. In accordance with Section 12 of P.L.2005, c.304 (C.3B:12-
2 24.1), a guardian of the person of a ward shall exercise authority
3 over matters relating to the rights and best interest of the ward's
4 personal needs, only to the extent adjudicated by a court of
5 competent jurisdiction. In taking or forbearing from any action
6 affecting the personal needs of a ward, a guardian shall give due
7 regard to the preferences of the ward, if known to the guardian or
8 otherwise ascertainable upon reasonable inquiry. To the extent that
9 it is consistent with the terms of any order by a court of competent
10 jurisdiction, the guardian shall:

11 (1) take custody of the ward and establish the ward's place of
12 abode in or outside of this State;

13 (2) personally visit the ward or if a public agency which is
14 authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.)
15 and P.L.1970, c.289 (C.30:4-165.7 et seq.) or the Office of the
16 Public Guardian pursuant to P.L. 1985, c.298 (C.52:27G-20 et seq.)
17 or their representatives which may include a private or public
18 agency, visits the ward not less than once every three months, or as
19 deemed appropriate by the court, and otherwise maintain sufficient
20 contact with the ward to know his capacities, limitations, needs,
21 opportunities and physical and mental health;

22 (3) provide for the care, comfort and maintenance and,
23 whenever appropriate, the education and training of the ward;

24 (4) subject to the provisions of subsection c. of N.J.S.3B:12-56,
25 give or withhold any consents or approvals that may be necessary to
26 enable the ward to receive medical or other professional care,
27 counsel, treatment or service;

28 (5) take reasonable care of the ward's clothing, furniture,
29 vehicles and other personal effects and, where appropriate, sell or
30 dispose of such effects to meet the current needs of the ward;

31 (6) institute an action for the appointment of a guardian of the
32 property of the ward, if necessary for the protection of the property;

33 (7) develop a plan of supportive services for the needs of the
34 ward and a plan to obtain the supportive services;

35 (8) if necessary, institute an action against a person having a
36 duty to support the ward or to pay any sum for the ward's welfare in
37 order to compel the performance of the duties;

38 (9) receive money, payable from any source for the current
39 support of the ward, and tangible personal property deliverable to
40 the ward. Any sums so received shall be applied to the ward's
41 current needs for support, health care, education and training in the
42 exercise of the guardian's reasonable discretion, with or without
43 court order, with or without regard to the duty or ability of any
44 person to support or provide for the ward and with or without
45 regard to any other funds, income or property that may be available
46 for that purpose, unless an application is made to the court to
47 establish a supplemental needs trust or other trust arrangement.
48 However, the guardian may not use funds from the ward's estate for

1 room and board, which the guardian, the guardian's spouse or
2 domestic partner as defined in section 3 of P.L.2003, c.246
3 (C.26:8A-3), parent or child have furnished the ward, unless agreed
4 to by a guardian of the ward's estate pursuant to N.J.S.3B:12-41, or
5 unless a charge for the service is approved by order of the court
6 made upon notice to at least one of the heirs of the ward, if
7 possible. The guardian shall exercise care to conserve any excess
8 funds for the ward's needs; [and]

9 (10) [If] If necessary, institute an action that could be
10 maintained by the ward including but not limited to, actions
11 alleging fraud, abuse, undue influence and exploitation; and

12 (11) have an affirmative duty to take actions that are not
13 abusive, neglectful, or exploitive of the ward, and to act in a manner
14 that is in the ward's best interests when performing or not
15 performing any task relating to the provision of guardianship
16 services to the ward.

17 g. In the exercise of the foregoing powers, the guardian shall
18 encourage the ward to participate with the guardian in the decision-
19 making process to the maximum extent of the ward's ability in order
20 to encourage the ward to act on his own behalf whenever he is able
21 to do so, and to develop or regain higher capacity to make decisions
22 in those areas in which he is in need of guardianship services, to the
23 maximum extent possible.

24 (cf: P.L.2005, c.304, s.39)

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26 4. This act shall take effect 60 days after the date of enactment.
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29 STATEMENT

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31 This bill amends section 3 of P.L.2005, c.370 (C.52:27G-34) to
32 expand the reasons why a person would be ineligible for
33 registration as a professional guardian or, if registered, may have
34 his registration suspended or revoked, and to establish civil
35 penalties to apply to a person who has engaged in any acts that
36 disqualify the person from registering or continuing to serve as a
37 professional guardian.

38 Current law allows for the disqualification of a person from
39 registering or continuing to serve as a professional guardian if the
40 person engages in any disqualifying acts. The bill expands the list
41 of disqualifying acts to include knowingly engaging in self-dealing
42 including, but not limited to, taking advantage of the professional
43 guardian's position in performing guardian responsibilities or acting
44 for the guardian's own interests rather than for the interests of the
45 incapacitated adult.

46 Under current law, a person who is disqualified from registering
47 as a professional guardian or whose registration to serve as a
48 professional guardian has been revoked is not subject to any

1 criminal or civil penalties other than those applicable to the
2 disqualifying acts. This bill provides for the imposition of a
3 supplemental civil penalty of not less than \$5,000 or more than
4 \$10,000 on any person whose registration has been suspended or
5 revoked. The civil penalty is in addition to those penalties that are
6 applicable to any of the disqualifying acts.

7 Current provisions of N.J.S.A.3B:12-56 and N.J.S.A.3B:12-57,
8 which describe the powers and duties of a guardian of the person of
9 a ward, do not indicate that the guardian has any duty to avoid
10 engaging in the abuse, neglect, or exploitation of the ward or to act
11 in the ward's best interest. This bill amends N.J.S.A.3B:12-56 and
12 N.J.S.A.3B:12-57 to stipulate that a guardian of the person of a
13 ward has an affirmative duty to take actions that are not abusive,
14 neglectful, or exploitive of the ward, and to act in a manner that is
15 in the ward's best interests when performing or not performing any
16 task relating to the provision of guardianship services to the ward.