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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Between lines 431 and 432
insert:

Section 12. Section 744.20041, Florida Statutes, 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



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12 representations in or related to the practice of guardianship.

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

15 (c) Being convicted or found guilty of, or entering a plea
16 of guilty or nolo contendere to, regardless of adjudication, a
17 crime in any jurisdiction which relates to the practice of or
18 the ability to practice as a professional guardian.

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

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

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

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



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

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

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

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

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

62 (m) Improperly interfering with an investigation or
63 inspection authorized by statute or rule or with any
64 disciplinary proceeding.

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

69 (o) Failing to report to the Office of Public and



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70 Professional Guardians in writing within 30 days after being
71 convicted or found guilty of, or entered a plea of nolo
72 contendere to, regardless of adjudication, a crime in any
73 jurisdiction.

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

78 (q) Failing to post and maintain a blanket fiduciary bond
79 pursuant to s. 744.1085.

80 (r) Failing to maintain all records pertaining to a
81 guardianship for a reasonable time after the court has closed
82 the guardianship matter.

83 (s) Violating any provision of this chapter or any rule
84 adopted pursuant thereto.

85 (2) When the Office of Public and Professional Guardians
86 finds a professional guardian guilty of violating subsection
87 (1), it may enter an order imposing one or more of the following
88 penalties:

89 (a) Refusal to register an applicant as a professional
90 guardian.

91 (b) Suspension or permanent revocation of a professional
92 guardian's registration.

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

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

98 (e) Requirement that the professional guardian pay



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99 restitution of any funds obtained, disbursed, or obtained
100 through a violation of any statute, rule, or other legal
101 authority to a ward or the ward's estate, if applicable.

102 (f) Requirement that the professional guardian undergo
103 remedial education.

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

111 (4) The Office of Public and Professional Guardians shall
112 adopt by rule and periodically review the disciplinary
113 guidelines applicable to each ground for disciplinary action
114 that may be imposed by the Office of Public and Professional
115 Guardians pursuant to this chapter.

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

125 (6) The Office of Public and Professional shall by rule
126 designate possible mitigating and aggravating circumstances and
127 the variation and range of penalties permitted for such



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128 circumstances.

129 (a) An administrative law judge, in recommending penalties
130 in any recommended order, must follow the disciplinary
131 guidelines established by the Office of Public and Professional
132 Guardians and must state in writing any mitigating or
133 aggravating circumstance upon which a recommended penalty is
134 based if such circumstance causes the administrative law judge
135 to recommend a penalty other than that provided in the
136 disciplinary guidelines.

137 (b) The Office of Public and Professional Guardians may
138 impose a penalty other than those provided for in the
139 disciplinary guidelines upon a specific finding in the final
140 order of mitigating or aggravating circumstances.

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

148 (8) Notwithstanding chapter 120, if the Office of Public
149 and Professional Guardians determines that revocation of a
150 professional guardian's registration is the appropriate penalty,
151 the revocation is permanent.

152 (9) If the Office of Public and Professional Guardians
153 makes a final determination to suspend or revoke the
154 professional guardian's registration, the office must provide
155 the determination to the court of competent jurisdiction for any
156 guardianship case to which the professional guardian is



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157 currently appointed.

158 (10) The purpose of this section is to facilitate uniform
159 discipline for those actions made punishable under this section
160 and, to this end, a reference to this section constitutes a
161 general reference under the doctrine of incorporation by
162 reference.

163 (11) The Office of Public and Professional Guardians shall
164 adopt rules to administer this section.

166 ===== T I T L E A M E N D M E N T =====

167 And the title is amended as follows:

168 Delete line 45

169 and insert:

170 Elderly Affairs to adopt rules; creating s. 744.20041,
171 F.S.; specifying the acts by a professional guardian
172 that constitute grounds for the Office of Public and
173 Professional Guardians to take specified disciplinary
174 actions; specifying penalties that the Office of
175 Public and Professional Guardians may impose;
176 requiring the Office of Public and Professional
177 Guardians to consider sanctions necessary to safeguard
178 wards and to protect the public; requiring the Office
179 of Public and Professional Guardians to adopt by rule
180 and periodically review disciplinary guidelines;
181 providing legislative intent for the disciplinary
182 guidelines; requiring the Office of Public and
183 Professional Guardians to designate by rule possible
184 mitigating and aggravating circumstances and the
185 variation and range of penalties; requiring an



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186 administrative law judge to follow the Office of
187 Public and Professional Guardians' disciplinary
188 guidelines when recommending penalties; requiring the
189 administrative law judge to provide written mitigating
190 or aggravating circumstances under certain
191 circumstances; authorizing the Office of Public and
192 Professional Guardians to impose a penalty other than
193 those in the disciplinary guidelines under certain
194 circumstances; authorizing the Office of Public and
195 Professional Guardians to seek an injunction or a writ
196 of mandamus for specified violations; providing for
197 permanent revocation of a professional guardian's
198 registration by the Office of Public and Professional
199 Guardians under certain circumstances; requiring the
200 Office of Public and Professional Guardians to notify
201 a court of the determination to suspend or revoke the
202 professional guardian's registration under certain
203 circumstances; providing that cross-references are
204 considered a general reference for the purpose of
205 incorporation by reference; requiring the Office of
206 Public and Professional Guardians to adopt rules;
207 renumbering and