# MEMORANDUM OF UNDERSTANDING

Between the

**(Local Public Guardian Program)**

and

**(Local Adult Protective Services)**

For

Coordination of Services Regarding Investigations of

Suspected Elder and Dependent Adult Abuse

Effective (Date)

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Name of APS Program Administrator Name of PG Program Coordinator

Name of APS Agency Name of Public Guardian

Address Address

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##

## Introduction and Purpose

A group of stakeholders from across California came together to address common issues pertaining to local Adult Protective Services (APS) and local Public Guardian (PG) programs with regard to the investigation and disposition of reports of suspected abuse and neglect of elders and dependent adults.

Relationships between the Public Guardian and Adult Protective Services vary greatly between jurisdictions. In fact, no two counties in California manage their Public Guardian and Adult Protective Services programs the same. The purpose of this MOU is to give an option to help provide clarification of each agency’s respective role and address jurisdictional and dispositional issues with the ultimate goal to increase communication and collaboration, address gaps in services, and enhance outcomes for elders and dependent adults.

Nothing in the APS Manual of Policy and Procedures or in the California Probate Code or California Rules of Court precludes cooperation between APS and PG. In fact, as one of the entities entitled to confidential APS information under W & I Code 15633.5, the California legislature clearly intended that the Public Guardian work closely with APS to protect elder and dependent adult abuse victims. Persons needing the extreme remedy of a public conservatorship are best served by early identification and referral to PG by APS. Because the PG has the unique authority under Probate Code 2900 to seize or freeze assets that are subject to loss, injury, waste, or misappropriation, is a neutral public entity subject to County audit controls as well as Superior Court, and is usually less costly than a private fiduciary, it is essential that APS workers be trained to properly identify individuals who both need this level of protection and for whom a conservatorship will be the least restrictive alternative.

The goal of this MOU is to maximize effectiveness of APS referrals to PG by providing a clear statement of each program’s criteria and expectations for inter-program communication. Chronic understaffing of California APS and PG programs necessitates that APS and PG workers not devote time and effort pursuing conservatorship for cases that do not meet the standard of proof required for the court OR in which there is no imminent threat to person or estate.

This document will be reviewed as needed, in response to substantive legislative changes.

## How to Use this MOU

The laws and regulations that provide guidance to APS and PG allow for varied interpretations of roles, as they relate to jurisdiction and disposition for both agencies. These laws and regulations allow both APS and the PG to take a more inclusive approach to identifying issues and working together to respond to and dispose of reports of abuse and neglect. However, it is recognized that Public Guardian staffing limitations can affect a County’s ability to accept referrals and petition for conservatorship on cases that the PG is not mandated to serve under Probate Code § 2920.

This MOU was designed as a menu: to give the APS and PG parties involved a host of options. Participants are encouraged, at a local level, to choose the options which best suit their needs/interests, to alter the given language in favor of more jurisdictionally appropriate terms, and/or to delete or amend whole sections of the document. This MOU was not meant as a final word on PG/APS interaction, rather, it was designed as a jumping-off point to initiate conversation and to improve collaboration and communication.

Regulations are cited throughout this document. Once the MOU has been executed, dissemination and training to all levels of staff is critical.

## Mutual Cooperation

The following general responsibilities confirm the agreement between (local PG) and (local APS) to provide mutual support and cooperation.

The (insert name of local PG) and the (insert name of local APS) mutually agree that:

1) APS will determine whether the threshold burden of proof to warrant a conservatorship can be met by obtaining medical verification of a persistent and chronic cognitive deficit in at least one of four major functions required by the court to establish a conservatorship:

• Alertness & attention (orientation to time, person, place, situation

• Information processing (short & long-term memory)

• Thought processes (hallucinations, delusions, disorganized thinking)

• Ability to modulate mood and affect (euphoria, anxiety, anger, etc.)

2) APS will further obtain evidence that deficit/s listed above are causing the client to be unable to resist undue influence or fraud, or is substantially unable to handle financial affairs AND/OR cannot properly take care of her/his personal needs for physical health, food, clothing, or shelter.

3) APS will rule out suitable less restrictive alternatives to public conservatorship by documenting in the case record a search via interview of client and all known contacts, including client’s attorney regarding existing trust or durable power of attorney for health care and/or finances. If either is found, case record must document interview of successor trustee or agent under DPOA to determine availability and suitability to take over management of client’s health care and/or finances. Case record must also document interview with the alleged perpetrator that, along with other evidence can be used to verify or rule out accusations of abuse or neglect.

4) APS will gather as much information as possible regarding the client’s income and assets and all known family members when completing the Public Guardian referral leaving no blank spaces. If information is unknown, then unknown will be documented in that section.

5) APS will conduct a joint home visit if the request is made from the PG to facilitate the referral process and to introduce the client.

6) APS will update the PG with any changes to the client’s situation as well as any additional abuse reports received.

7) PG may be available for consultation in advance of formal referral, to render an opinion, based on information provided, whether situation appears to warrant conservatorship.

8) PG will acknowledge the receipt of the conservatorship referral within a mutually agreed upon time frame.

9) PG will provide pertinent updates to APS regarding client’s situation that may impact the APS investigation as well as the outcome of the conservatorship process.

10) PG will make a reasonable attempt to regularly attend the APS multidisciplinary team meeting to assist with collaboration and communication as requested by APS.

## Specific Commitment and Reporting Section

Adult Protective Services will generate a referral to the County Public Guardian as soon as capacity issues are identified AND the following criteria are met:

1) No jurisdictional conflicts exist (e.g. a Regional Center client who may be better served through that Conservatorship process).

AND

2a) The individual is determined to be in an unsafe living situation due to a confirmed finding of self-neglect as a result of medically documented mental deficits listed in #1, under “Mutual Cooperation”;

OR

2b) The individual is unable to protect her/himself from abuse or neglect by others as a result of medically documented deficits listed in #1, “Mutual Cooperation.”

AND

3a) A search has been conducted to find family, friends willing to file for conservatorship or a successor trustee, or an agent under durable power of attorney willing and appropriate to take appropriate actions to protect the individual in question, and none were found;

OR

3b) A search has yielded family, friends, a successor trustee, or an agent under durable power of attorney capable of protecting the individual in question, but who have refused to intervene on their behalf;

OR

3c) A search has yielded family, friends, a successor trustee, or an agent under durable power of attorney capable of protecting the individual in question and APS has determined through vetting that the family or friends are inappropriate/not-capable of protecting the individual in question;

OR

3d) A search has yielded family, friends, a successor trustee, or an agent under durable power of attorney capable of protecting the individual in question, but follow-up (either during the current investigation or subsequent investigations) has found a substantial lack of follow-through and/or an unwillingness to proceed with conservatorship, exercise of duties as a successor trustee or agent under durable power of attorney or a protection plan.

For the purposes of this MOU, an appropriate “search” is defined as: Examples include: a) Thorough – all attempts to locate family/friends, successor trustee, agent under DPOA have been made by APS, b) Reasonable – attempts to locate family/friends, successor trustee, agent under DPOA have been made and the PG will complete the search/investigate leads, c) Cursory – the PG is responsible for most search functions, and APS is only required to disclose initial names/leads.

AND

4) A suitable capacity declaration has been completed by a physician, psychologist, or religious healing practitioner who has determined that the individual in question has mental deficits in at least one of four major areas described in #1, “Mutual Cooperation.”

For the purposes of this MOU, a “suitable capacity declaration” is defined as:

Examples include: a) APS is responsible for obtaining the Capacity Declaration as a critical step in determining whether the client’s mental status meets the standard of proof for conservatorship, b) A GC-335 form, filled-out by the client’s primary care physician is acceptable, c) A thorough evaluation completed by an individual who specializes in geriatrics.

5) If requested, participate in regular case staffing with the PG’s Office regarding the status of referred cases.

6) Furnish information sought by the Public Guardian's Office as requested to proceed with the referral. This may include providing an update to the PG investigator within a mutually agreed upon time after each face to face visit and after any substantial client contact, for example, the advent of a new family member or a change in the health status of the individual.

For the purposes of this MOU, the furnishing of information by APS shall be handled in the following way(s):

Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

7) Continue to case manage, through APS or through an outside case management agency, the individual in question until PG is appointed or a determination is made by the PG’s Office to not file a petition for conservatorship.

For the purposes of this MOU, “case manage” is defined as: Examples include: a) Face to face visits between the client and a Social Worker at least once every thirty days, b) Regular telephonic contact between the client and the Social Worker, as well as appropriate follow-up for needed items, c) The Social Worker is responsible for returning any phone calls related to the matter and/or furnishing any needed documents.

The Public Guardian will respond to the referral generated by Adult Protective Services in the following ways:

1) Acknowledge the referral from APS within a mutually agreed upon time of receipt.

For the purposes of this MOU, receipt of the referral by the PG shall be handled in the following way: . Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

2) The PG will investigate and make a determination within a mutually agreed upon time whether they are going to move forward with petitioning for conservatorship.

For the purposes of this MOU, determination by the PG shall be handled in the following way: . Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

3) Provide an update as to the status of all pending APS referrals as requested by APS.

For the purposes of this MOU, updates from the PG shall be handled in the following way: . Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

4) Notify APS as soon as practically possible when a determination has been made regarding negative disposition of the referral (for example, if the petition for conservatorship is not granted;

AND/OR

After any significant developments (for example, a rejection of the capacity declaration);

AND/OR

The referral doesn’t meet PG referral criteria.

For the purposes of this MOU, proper notification from the PG shall be handled in the following way: . Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

5) Notify APS as soon as practically possible when a determination has been made regarding positive disposition of the referral (for example, if the Judge grants conservatorship or grants conservatorship with restrictions).

For the purposes of this MOU, proper notification from the PG shall be handled in the following way: . Examples include: a) Verbally and in writing, b) Verbally only, c) In writing only.

Adult Protective Services AND the Public Guardian will communicate regarding joint cases in the following way(s): Examples include: a) A face to face staffing on the first Tuesday of each month, b) A bi-weekly conference call on the second and fourth Thursdays at 3:00 PM, c) A written update, produced by the PG, regarding the status of each client to be distributed to APS management by the second Wednesday of each month, d) A joint log kept on the County server updated by both APS and the PG by the third Monday of each month.

**APS & PG MOU Reporting Flow Chart**

There are no jurisdictional conflicts

A suitable Capacity Declaration done

**Family or friends to file for conservatorship**

**PG now involved**

Search conducted

OR search found family or friends, but have refused to intervene

OR search found family or friends willing but not capable or appropriate

OR search found family or friends but question of follow through

Adult Protective Services will generate a referral to the County Public Guardian as soon as capacity issues are identified AND the following criteria are met

OR confirmation that individual is unable to protect himself (herself) from abuse or neglect by others

AND confirmation of individual in an unsafe living situation

A search found family or friends willing to file for conservatorship or take appropriate actions to protect

**APS & PG Referral Form**

When Adult Protective Services is alerted to an abuse or neglect issue and determines that the client may require the services of the Guardian’s office, the Social Worker is encouraged to fill-out a standardized PG referral form that has been approved and adopted by that county.

Essential elements of this referral form are:

* Client Identification Information
* Nature of Referral to APS
* Presenting Problems
* Justification for a Probate Conservatorship
* History of APS Referrals
* Client Environment
* Client supports & Family/Friends including contact information
* Client’s Physical and Mental Health including diagnosis
* Screening Tools Administered and Score(s)
* Other Agencies Involved
* Corroborating Information
* Desired Outcome
* History of Referrals to APS and/or the PG
* Medications
* Capacity Declaration (if a County requirement)

Jurisdictions are welcome to add or subtract to this list, or to leave any current referral forms intact, as they see fit. After completion the APS Social Worker reviews it with their supervisor for approval, and then forwards to the Public Guardian.

**APS & PG Multi-Disciplinary Team Meeting**

If this jurisdiction provides for a joint Multi-Disciplinary Team Meeting (see Reporting section re: communication between agencies), the above form provides an excellent catalyst for referral and discussion. For the purposes of this MOU the recommendation is for the MDT to meet on a monthly basis and that all persons involved in the MDT are specialized at serving this population, for example:

* PG Investigators and Staff
* APS Social Workers, Supervisors, Managers and Directors
* Geriatricians
* County Counsel
* Mental Health
* Court Advocates
* Regional Center Staff
* Probate Court Investigators
* Long-Term Care Ombudsman
* Other Professionals Involved in Specific Cases (Hospital Social Workers, Visiting Nurses, Etc.)
* County Counsel representing the Public Guardian

The Social Worker presents the information on the form to the MDT group and a discussion is held. Problem solving ideas are presented, and if it is decided that conservatorship might be an option, the Social Worker is asked to submit a referral packet that includes the Capacity Declaration or some other documentation or evidence that supports client’s incapacity (whichever is required by the particular County) and a copy of the APS case records to the Public Guardian’s office for investigation. If conservatorship is deemed not appropriate the case is referred back to APS for disposition.

If moving forward with an assessment, if appropriate, it is recommended that the PG and APS conduct a joint face-to-face interview with the client. Until conservatorship is granted or denied, the cases may be discussed at the monthly MDT for status/updates. If at any time (either due to circumstances or because of Court action) conservatorship is deemed not appropriate the case is referred back to APS for disposition.

Some general notes:

* This MDT may fold into an Elder Abuse and Neglect MDT already in effect in a respective jurisdiction. Non-county employees should be asked to sign a confidentiality agreement. Any written material distributed during the meeting must be collected at the end of the meeting.
* This Memorandum of Understanding does not indicate a preference for an in-person meeting, a teleconference, a shared file, or for a combination; regular communication and the exchange of information between APS and the PG is the important thing.

**Statutes**

PROBATE CODE

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

Part 5 Public Guardian

Chapter 3. APPOINTMENT OF PUBLIC GUARDIAN § 2920. APPLICATION FOR APPOINTMENT; COURT ORDER; NOTICE AND HEARING:

(a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:

(1) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.

(2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

(c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

CREDIT(S)

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2006, c. 493 (A.B.1363), § 32.)

LAW REVISION COMMISSION COMMENTS

1990 Enactment

Section 2920 continues Section 2920 of the repealed Probate Code without change. For general provisions, see Sections 1000-1004 (rules of practice), 1020-1023 (petitions and other papers), 1040-1050 (hearings and orders), 2103 (effect of final order). For general provisions relating to notice of hearing, see Sections 1200-1221, 1460-1469. See also Sections 1260-1265 (proof of giving notice).

Section 2920 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian. Even though there may be other persons qualified and willing to act, their appointment may not be in the best interest of the ward or conservatee. This could occur, for example, where a neutral party is needed because of family disputes. In such a situation, a public guardian is not liable for failure to take possession or control of property that is beyond the public guardian's ability to possess or control. See Section 2944 (immunity of public guardian).

The court may order appointment of the public guardian only after notice to the public guardian and a determination that the appointment is necessary. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianship, and whether the public guardianship is simply being sought as a convenience or as a strategic litigation device by the parties involved. Alternative means of resolving the situation, besides appointment of the public guardian, could include such options as use of a private guardian or appointment of a guardian ad litem, in an appropriate case.

Subdivision (b) permits the special notice to the public guardian and hearing under this subdivision to be combined with a general notice and hearing for appointment of a guardian or conservator, in the interest of procedural efficiency.

Background on Section 2920 of Repealed Code

Section 2920 was added by 1988 Cal.Stat. ch. 1199 § 72. The section superseded the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. For background on the provisions of this part, see the Comment to this part under the part heading. [20 Cal.L.Rev.Comm.Reports 1001 (1990)].

**Confidentiality**

#### Public Guardian (PG)

The Public Guardian (PG) agrees to maintain the confidentiality of Adult Protective Services (APS) records as required by California Welfare and Institutions Code, Section 10850, 15633 and 15633.5, as well as the Federal Health Insurance Portability and Accountability Act of 1996 (HIPPA).

PG may share confidential information with APS only as necessary and appropriate for the purpose of treatment, including coordination of care/case management. The parties, and their respective directors, officers, employees and agents shall hold such confidential information in strict confidence and shall not disclose the same unless permitted or required by law. The following sections of the Welfare and Institutions Code reference confidentially of APS materials: Section 10850 states that “all applications and records concerning any individual made or kept by any public officer or agency… shall be confidential.” Section 15633.5 states that all reports made by both mandated and non-mandated reporters are confidential and any information contained in such reports may be disclosed only to certain individuals and agencies, and under clearly defined circumstances. Section 15633 (b) (2) (A) permits the disclosure of elder and dependent adult abuse information to members of multidisciplinary personnel teams (MDT). MDT is defined under WIC 15610.55.

WIC 15754 stipulates that MDTs may disclose information as follows. (a) Notwithstanding any provision of law governing the disclosure of information and records, persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records which are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons. (b) Expect as provided in subdivision (a), any personnel of the multidisciplinary team that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures that maximum protection of privacy and confidentiality rights. In regards to APS records consult with County Counsel.

#### Adult Protective Services (APS)

APS records and reports of suspected elder or dependent adult abuse and information contained therein are considered strictly confidential and may only be disclosed to certain persons or agencies as stipulated by California W&I Code, 15633.5. Per this statue, information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an APS agency, local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau (Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse), or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency: and APS agency, PG, a Long Term Care Ombudsman Program, a licensing agency, and other as permitted by statute (W&I Code 15633.5(b)).

The identity of a person who reports may also be disclosed to the district attorney in a criminal prosecution, when a person reporting waives confidentiality, or by court order.

Pursuant to statue (W&I Code, 15633.5), APS and the PG agree to maintain confidentiality of all records shared/disclosed as part of the MOU. As such, all APS and PG staff are under an equal obligation to treat as confidential any information they may acquire, by any means, about any recipient of APS or PG services. Information obtained via this agreement is solely for the purpose of providing service and assistance.

**Local Contacts**

(Local APS)

A. The contact person for (local APS) for policy issues and general liaison responsibilities shall be:

(enter name, address, contact information)

B. The back-up liaison if/when (named person A) is not available for the local APS agency shall be:

(enter name, address, contact information)

(Local PG)

A. The contact person for the local PG for policy issues, training, legislation and general liaison responsibilities shall be:

(enter name, address, contact information)

B. The back-up liaison if/when (named person A) is not available for the local PG shall be:

(enter name, address, contact information)

Optional Language

A. GOVERNING LAW. This MOU shall be governed by, interpreted under and construed and enforced with the laws of the state of California.

B. AMENDMENT. No variation, modification, change or amendment of this MOU shall be binding on either party unless such variation, modification, change or amendment is in writing and duly authorized and executed on behalf of the District, its governing board or its authorized designee. This MOU shall not be amended or modified by oral agreements or understanding between the parties or by any acts or conduct of the parties.

C. ENTIRETY. This MOU constitutes the entire agreement between the parties with respect to the subject matter of this MOU and supersedes all prior and contemporaneous agreements and understandings.

D. NO THIRD PARTY BENEFICIARY/SUCCESSORS AND ASSIGNS. This MOU is made and entered into for the cooperation of the parties in providing services. No other person or entity may assert rights based upon any provision of this MOU.

E. SEVERABILITY. If any provision of this MOU shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this MOU shall not be affected and this MOU shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this MOU.

F. INTERPRETATION. It is recommended that both parties consult with counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language and any ambiguities shall not be resolved against the drafting party.

This MOU was drafted with the purpose of filling gaps in services provided to elder and dependent adults. If there is change in the statutory and regulatory scheme of the APS and/or PG programs, the changes are binding on the parties.

G. TERMINATION. Either party may terminate this MOU at any time..

H. NOTICES. For purposes of this MOU, notices shall be sent as follows:

To: [INSERT NOTICE CONTACTS]

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date shown:

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