

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 14, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 9:48 a.m. on Thursday, May 14, 2015, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)
Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Michael C. Sprinkle, Assembly District No. 30
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

George Burns, Commissioner, Division of Financial Institutions, Department of
Business and Industry

Senate Committee on Judiciary
May 14, 2015
Page 2

Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division,
Department of Health and Human Services
Tim O'Callaghan, Roman Catholic Diocese of Las Vegas
Karen Scioscia
Mike Dyer, Nevada Catholic Conference
Mike Patterson, Lutheran Episcopal Advocacy in Nevada
Jon Sasser, Southern Nevada Senior Law Program; Washoe Legal Services;
Legal Aid Center of Southern Nevada
Barry Gold, AARP Nevada
Dan Roberts, *The Vegas Voice*
Lora Myles, Carson and Rural Elder Law Program; Retired and Senior Volunteer
Program
Kim Spoon
Shelly Register
Beverly Salhanick
Jon Leleu, International Market Centers, LP

Chair Brower:

We will open the hearing on Assembly Bill (A.B.) 325.

ASSEMBLY BILL 325 (1st Reprint): Enacts provisions governing persons engaged in the business of a private professional guardian. (BDR 54-976)

Assemblyman Michael C. Sprinkle (Assembly District No. 30):

Assembly Bill 325 is lengthy. It establishes a new licensing requirement for private professional guardians based on models of other licensed industries in the State. It creates an infrastructure for licensure in the Division of Financial Institutions (DFI) of the Department of Business and Industry. It allows for yearly auditing of private professional guardians and the businesses they are associated with. It provides for background investigations to confirm ethical and moral qualifications and national certification requirements. It provides direct regulatory oversight by a State agency over private professional guardians, private professional guardian companies and the fiduciary relationship between the private professional guardian and the ward. This bill provides for an administrative hearing process and for judicial review of the Commissioner's decisions.

Assembly Bill 325 helps to legitimize an extremely important and necessary industry while protecting those who are dependent on guardians. This

protection is needed because private professional guardians, especially in southern Nevada, have exploited wards. Assembly Bill 325 does not take away the oversight that the courts already have over this industry pursuant to *Nevada Revised Statutes* (NRS) 159. This bill provides for the direct oversight that the courts do not have the time or ability to do, especially when a complaint is made. Private professional guardians take care of individuals who do not have the ability to take care of themselves. These individuals are extremely vulnerable. Most of the time nothing goes wrong and private professional guardians provide an invaluable service. We need oversight in place for when something does go wrong.

Assembly Bill 325 is a comprehensive and necessary piece of legislation to create oversight of an industry that has lacked oversight. It is not the intent of this bill to harm the industry but rather to strengthen its credibility and ensure that those who exploit a person incapable of looking out for himself or herself will no longer be allowed to practice in Nevada.

George Burns (Commissioner, Division of Financial Institutions, Department of Business and Industry):

I was contacted early last year by a colleague from the Aging and Disability Services Division of the Department of Health and Human Services regarding the issues surrounding private professional guardians. My colleague asked if there were the means and methods to regulate this industry within the DFI. The DFI has the knowledge and experience to license, examine and supervise a cadre of financial enterprises. In collaboration with multiple parties, we drafted the language contained in Assembly Bill 325. We took standards for licensing, examination and supervision from our existing applicable statutes and tailored them for the regulation of private professional guardians.

The application provisions for private professional guardians are substantially the same as those used for other DFI licensees, as are the examination procedures contained in the bill. Private professional guardians will be required to maintain separate accounts for each ward and account for all transactions. This is the basis of DFI's examination technique, which traces credits and debits and follows the money to determine that the transactions are appropriately accounted for. The court system has very little time or expertise in this area.

The supervision provisions for handling complaints and taking administrative action against licensed private professional guardians are similar to those that

we use for other DFI-regulated entities and will be implemented in accordance with the Administrative Procedures Act. The DFI has determined that sufficient resources are available to license, examine and supervise the relatively small number of entities that are reported to practice in Nevada. There are approximately 20 to 30 entities. The DFI can absorb that workload without any additional staff or additional funds. Assembly Bill 325 provides the basis for regulating private professional guardians for the protection of the public interest and the credibility of the industry.

Sally Ramm (Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services):

Private professional guardians are appointed by the court to make decisions for a person who has been deemed by the court to be unable to take care of himself or herself. I received a report this week from the Administration on Aging, U.S. Department of Health and Human Services that shows the population of people 65 years old and older has increased in Nevada more than 50 percent in the last 10 years. This is the largest increase in this population of any state in the Country. In 2015, 13.8 percent of the people in Nevada are 65 years old and older, with 42,335 people 85 years old and older. Adults in the age group 65 years old and older are the group most likely to need guardians.

There are between 20 and 30 private professional guardians working in Nevada. That is more than double the number from 8 years ago when the idea of regulating this industry was first introduced to the Legislature. With our rapidly growing senior population and the financial incentives this business offers, the number will continue to grow.

Assembly Bill 325 provides a way to help those private professional guardians who have good business practices prove to the court, the community and their clients that they are trustworthy and professional. There are good private professional guardians in the State that do a good and important job. This group has no way to delineate itself from those who are not. Licensing would help. The cost of licensing described in A.B. 325 are the maximums allowed. Actual fees will be set following a public hearing with input from the guardians.

If the family members of a person under the control of a private professional guardian have a concern or complaint about the way their loved one's assets are being handled, their only recourse is to hire an attorney and go to court. The

court determines if there is a reason to name a new guardian. If A.B. 325 passes, the business practices—not the social practices controlled by the court—will be under the control of the licensing board. A concerned person will be able to call the licensing board and make sure the license is up to date and the required auditing has been done. This protects both the licensee and the ward.

Chair Brower:

How many states have a licensing scheme of this type?

Assemblyman Sprinkle:

I do not know.

Ms. Ramm:

Every state handles guardianships differently. There are a number of states with some sort of licensing. For example, in Arizona the Supreme Court licenses the private professional guardians. Florida, California and Iowa have licensing requirements.

Assemblyman Sprinkle:

Chapter 159 of NRS requires certification through a nationally recognized organization. Assembly Bill 325 requires a licensee have and maintain this certification.

Tim O'Callaghan (Roman Catholic Diocese of Las Vegas):

We support A.B. 325.

Karen Scioscia:

My husband Angelo was a resident at Lakeview Terrace of Boulder City. It is not a skilled nursing facility. Angelo was there from May 2014 until his passing 4 weeks ago. Angelo was admitted to the Nevada State Veterans Home in August 2013 with a diagnosis of Alzheimer's disease. He was under the care of a Henderson neurologist and a Henderson neurosurgeon. I have a power of attorney to act on Angelo's behalf through our trust. On the evening of March 28, 2014, Angelo was picked up on a Legal 2000 from the Nevada State Veterans Home. He was transported to the Boulder City Hospital gero-psych unit under the care, or should I say control, of Dr. Scott Rubin.

Nevada Revised Statute 433A.115 defines a "person with mental illness" and clearly states that it does not include a person with diminished mental capacity because of Alzheimer's disease. With the pending discharge from the Boulder City Hospital, I had to find a facility for Angelo. The doctors said he needed a skilled nursing facility. Because of the restriction of the Legal 2000, skilled nursing facilities would not accept him. The then-marketing director and administrator of Lakeview Terrace happened to be at the Boulder City Hospital. She said Lakeview Terrace would be able to care for Angelo. The administrator assured me that they would never send Angelo away. She said, "Angelo is ours. We will care for him." I feel that what happened to Angelo is a story of corruption, greed, collusion and mostly, a failed system. Maybe it is just our own sad love song.

I was with Angelo every day on his journey with Alzheimer's disease. In doing so, I became friends with most of the residents at Lakeview Terrace. They have become my family. With a humble heart, compassion, care and love I sat with them and listened to all they had to say. Many that I spoke with told me how they arrived at Lakeview Terrace. Most were from Las Vegas, and they were taken from their homes by court order. One woman told me that after her husband died, the police took her to Lakeview Terrace. Her house was sold. Her husband's ashes were taken as well as all of her personal belongings. All she had left were a few clothes and her dog. She asked me to help her. I did not know how to help. I could only listen and be there for her.

I heard the same story from other residents. I listened sometimes in disbelief. How could this happen? I felt their pain and their shame. I held them as they cried on my shoulder, and I cried with them. I mentioned to one couple that maybe they should get an attorney. They said they had called their attorney and were told nothing could be done.

The Lakeview Terrace administrator resigned in December 2014, as did most of the management staff. The stories told to me were all the same. All were brought to Lakeview Terrace by court order and all were under the same private professional guardian. The residents referred to her as evil, as a monster. They said she should go to jail.

One day I met a woman who came down to the memory care unit, where my husband was. She knew my name. She said, "Hello, Karen. You are Angelo's wife." I said "hello" just to be friendly. I did not know who she was. I

was told her name was Heidi and she worked for the private professional guardian. I still wonder to this day how she knew me. There was another resident in memory care unit whose daughter was visiting. I noticed the daughter sitting in a quiet room crying. I went to her. I asked her what was wrong and if I could help her. She said that she had petitioned the court and now had a guardianship of her father. She said all of his assets were gone. She had hired an attorney to find out what happened to all the assets. She said she did not know how they would be able to keep her father at Lakeview Terrace.

On another day, this private professional guardian and her employee Heidi visited a woman in the memory care unit. The woman told the private professional guardian that she wanted to move into assisted living. The private professional guardian told her she could take care of that. The private professional guardian and Heidi walked away laughing. One of them said, "Wow, she does not realize what a great answer she just gave us." I have heard that the private professional guardian moved this woman to another facility. She no longer has her dog.

Through the media, I heard and read about John Norheim, the Guardianship Commissioner. I watched Darcy Spears' investigation of this particular private professional guardian. The stories from my friends at Lakeview Terrace were all true. All their assets are gone. John Norheim's name was familiar to me because he placed the Legal 2000 on my husband Angelo in March 2014 via a videoconference with Dr. Rubin at the Boulder City Hospital. I was neither part of nor told about the videoconference at the time.

The new administrator at Lakeview Terrace is Julie Liebo. She and I have become friends. I have asked her what I can do to help. She is now working with State agencies to stop this private professional guardian. Since Julie has become administrator, all of this private professional guardian's wards have been moved out of Lakeview Terrace to another facility.

I shared these stories and more with Deacon Tim O'Callaghan. He has been with Angelo and me on our journey from the beginning, always listening, caring and feeling my pain. He was always available to give me pastoral care and to pray and listen. My faith is strong. God has given me the strength and courage to walk this journey with my beloved husband Angelo and now the strength and courage to come before you today and plead for your help for our most vulnerable elderly.

Mike Dyer (Nevada Catholic Conference):

The Catholic Conference is the method by which the Catholic Bishops of the State of Nevada speak on public matters. The Nevada Catholic Conference supports A.B. 325.

I had a personal experience with a private professional guardian. It involves a 76-year-old woman who was living independently in Douglas County. One morning she went out to work in her flower garden. A private professional guardian showed up with a police officer and a fire truck. The police officer told the woman that the guardian had a court order. He told her she had to go with him, and if she did not go willingly, an ambulance would be called and she would be restrained.

The woman was taken to Carson-Tahoe Hospital. She spent over 6 hours being examined by the physician on duty who cleared her and sent her home. Ten months later with an attorney, she was able to get the guardianship released. It had been established ex parte without notice to her at the request of a Jane Doe complainant—a family member who did not want to be identified. As part of getting the guardianship released, the woman had to pay the private professional guardian company over \$40,000 in fees and expenses. That was half of what the private professional guardian company asked the court to award. That is a real experience. It happened in 2011 and 2012. It could happen today.

Mike Patterson (Lutheran Episcopal Advocacy in Nevada):

We support A.B. 325.

Chair Brower:

Typically, a court appoints a guardian. Please explain why that is not adequate.

Jon Sasser (Southern Nevada Senior Law Program; Washoe Legal Services; Legal Aid Center of Southern Nevada):

The three programs that I represent are involved to some degree in this area of the law, either representing wards or serving as guardians *ad litem*. We helped vet A.B. 325 with Sally Ramm prior to this Session. We support A.B. 325.

A petition is filed with the court. Sometimes a private professional guardian is contacted to assist with the filing of the petition. The court appoints a guardian. If no family member is available, a private professional guardian can be

appointed who may have had no contact with the family in the past. The law prescribes the duties to be performed, including an annual accounting. In practice, those accountings are not thorough or timely. That has led to the complaints you have heard today. A regulatory body with oversight that requires a bond in case of malfeasance and sets standards would be helpful.

Chair Brower:

The judge appoints, supervises and can terminate the guardianship. The collective experience seems to be that, even with judicial supervision, the process is not adequate.

Mr. Sasser:

Yes. Supervision is a strong term for what the judge does. The judge appoints the guardian. In Las Vegas, there are probably thousands of cases in the judge's court. The judge relies upon the guardian to provide information unless an attorney is appointed for the ward.

Barry Gold (AARP Nevada):

Assembly Bill 325 will help individuals who need a guardian. It will help families whose loved one needs a guardian. It will help everyone in Nevada know that there is some assurance of protection for our State's most vulnerable people. On behalf of the 314,000 AARP members in Nevada, we strongly urge passage of A.B. 325.

Dan Roberts (*The Vegas Voice*):

The Vegas Voice is the largest monthly senior newspaper in southern Nevada. Over the past few months, our political editor Ronda Goodman has extensively researched the guardianship industry in Clark County. You need only review our previous articles as well as the recent private public guardian reports by the *Las Vegas Review-Journal* and ABC TV Las Vegas Channel 13 to understand the urgent need for A.B. 325. As demonstrated by the 3,622 petitions previously submitted to this Committee, the senior community has spoken loudly and clearly in support of the regulation of the private for-profit guardianship industry. Along with our over 100,000 readers, *The Vegas Voice* urges you to pass A.B. 325.

Lora Miles (Carson and Rural Elder Law Program; Retired and Senior Volunteer Program):

I support in part A.B. 325. It is a good bill. However, A.B. 325 raises issues that have not been addressed. Assemblyman Sprinkle mentioned that there would be coordination between the Commissioner and the courts and that this bill would not replace court oversight. One of the most glaring problems raised by A.B. 325 is in sections 43 and 46. The Commissioner has no legal authority to act as guardian or to appoint someone as a receiver to act as guardian. Seizure of assets of a private professional guardian's office includes assets that belong to the wards. Who is going to replace the guardian for those wards? Will the Commission in seizing those assets pay the expenses of the wards? What happens to the wards' assets? What happens to the wards? Attorneys Henry Cavallero and Lee Drizin raised these issues before the Assembly Committee on Judiciary.

Another problem with A.B. 325 is the lack of notice to the court of actions by the Commissioner, which affect the ability of private professional guardians to carry out the duty of guardian in appointed cases. There needs to be language in A.B. 325 addressing notice of actions of the Commissioner not only to the licensees but also to the courts. The courts must have notice of what is happening to these guardians in order to appoint replacement guardians or to request further documentation from these guardians. Sections 50.5 and 51.5 should be deleted because the relevant sections of the NRS have already been amended by other legislation during this Session.

Chair Brower:

Have you submitted a proposed amendment to A.B. 325 that make the changes you have addressed?

Ms. Myles:

I have not, but I can.

Chair Brower:

Assemblyman Sprinkle, have you considered these suggestions?

Assemblyman Sprinkle:

In a short and ambiguous way during the last Assembly Committee on Judiciary, some of these suggestions were brought to my attention. I have not been approached since. No one has tried to discuss these suggested changes

with me. This is new to me this morning. The problem regarding reporting to the courts is not correct. When an investigation is done by the Commissioner, a report is submitted to the court. I am always happy to talk with people. I have every intention of continuing discussions after the Session is over. I have spoken to a Senator about continuing with a working group to address these issues during the interim.

Chair Brower:

Ms. Myles, please put together a list of your proposed amendments and submit it to the sponsor of the bill and the Committee so we can understand your concerns and consider your proposed amendments.

Ms. Myles:

It is a simple insertion of "after notice to the licensee and the courts" in certain areas.

Kim Spoon:

I am a private professional guardian. I work in the Sparks and Reno areas. I was a Washoe County Public Guardian for 6 years before I went into private practice. I have also done guardianships in Mineral, Storey, Churchill, Lyon and Carson City Counties. I have provided written testimony ([Exhibit C](#)).

Private professional guardians are concerned about whether the DFI's responsibilities under A.B. 325 will conflict with those of the judges who are essentially our bosses. Since the DFI does not have the ability to appoint a guardian, what will happen to wards if a license is revoked? Private professional guardians are not against licensure; however, this type of licensure will not work for the courts, the wards or us. For example, summary administrations are part of guardianships when a ward has an estate of \$10,000 or less. Courts authorize a summary administration because the ward cannot afford an accounting for the court. Assembly Bill 325 does not allow summary administrations. The cost of a required accounting will fall on the private professional guardians and their attorneys. It costs probably about \$1,000 to \$1,500 for each accounting. This is discriminatory to private professional guardians.

I would like to correct some errors. There are not 20 to 30 private guardian entities in Nevada. About 20 individuals are registered guardians and actually practicing. There are only 14 businesses, 12 of whom have only one guardian.

In 2008, there were 14 practicing private professional guardians. We have only gained six private professional guardians in the last 7 to 8 years. This is not a fast-growing profession. It is a difficult job. Overregulation means fewer professional guardians.

If you are going to regulate private professional guardians, do so under the Nevada Supreme Court. The courts are our bosses and they are the ones that should be regulating what we do and how we do it. We have no problem being regulated by the Supreme Court. Chief Justice James W. Hardesty is developing a statewide committee to study this issue. Overregulation of these very small businesses will be so intimidating that Nevada will have no private professional guardians in the next 5 or 6 years. It will be too difficult and the financial component too unknown. Assembly Bill 325 leaves our businesses in a questionable and vulnerable position.

Senator Harris:

Are the 20 registered guardians in Clark County or statewide?

Ms. Spoon:

That is not the number of registered guardians. There are probably 30 to 40 registered guardians through the National Guardianship Association. There are 20 practicing guardians in Nevada.

Senator Harris:

There are 14 businesses. Twelve of those have one guardian. How many clients does each guardian have?

Ms. Spoon:

The number of clients varies depending on the business. In our business, we have four full-time guardians and one part-time guardian. We are the largest such business in the State. We average about 20 clients for each guardian. There are guardians who average ten or less. Some have 20 to 30 clients.

We heard testimony earlier about a private professional guardian in Douglas County. This type of testimony is very dramatic. I am troubled that no one is talking to the private professional guardian who was actually involved to understand what really happened. I know about the Douglas County case. The story does not reflect the reality of what actually happened.

Shelly Register:

I am a private professional guardian. I have provided written testimony ([Exhibit D](#)). I oppose A.B. 325. There are some problems in our State. In northern Nevada, guardianships are done a certain way, and in southern Nevada, a completely different way. I am pleased Chief Justice Hardesty is forming a working group to look into guardianship issues. Consistency in application of the law will help our courts and guardianships a great deal. That is the way to go. The courts can manage guardianships; however, they need more resources.

There are national organizations working on guardianship issues. I have provided information on the National Guardianship Network ([Exhibit E](#)). I have provided *A Model Code of Ethics for Guardians* by Michael D. Casasanto, Mitchell Simon and Judith Roman ([Exhibit F](#)) and *Standards of Practice, Fourth Edition 2013* ([Exhibit G](#)) from the National Guardianship Association Website. I also provided information from the Center for Guardianship Certification ([Exhibit H](#)), which includes a map as well as a chart of the regulatory schemes of other states. I refer to Texas, Arizona and Washington in my testimony. Washington proposed a regulation that permits family members to come to the court with a complaint and includes a process for pro per complainants. It is an innovative bill and one that should be considered in Nevada. There are media reports and testimonials to which the courts and the private professional guardians cannot respond because of confidentiality. I have provided the links to various articles ([Exhibit I](#)). There are issues that need to be addressed in Nevada; however, regulation by the Nevada Supreme Court is the way to go.

Assemblyman Sprinkle:

This evolving topic will be addressed during the interim. Assembly Bill 325 establishes an infrastructure so that we have something to work from, especially regarding the fiduciary responsibilities of private professional guardians. That is the most important aspect of this bill. We must protect the assets. We can look at the industry as a whole. We can spend a lot of time on this, and I intend to do so once this Session is over. The infrastructure is needed now. The testimony provided at this hearing is only the tip of the iceberg.

Senator Harris:

We will close the hearing on A.B. 325 and open the hearing on A.B. 379.

ASSEMBLY BILL 379 (1st Reprint): Revises provisions relating to commercial tenancies. (BDR 10-126)

Assemblyman James Ohrenschall (Assembly District No. 12):

I was the sponsor of A.B. No. 398 of the 76th Session. It was sweeping legislation that created NRS 118C addressing commercial tenancies. It was a positive bill that has had much success in practice; however, during the interim, I was approached by different constituents and Beverly Salhanick, a private civil attorney in Las Vegas, regarding some additional issues.

A real estate broker was struggling with her rent, but her business was surviving. She was working things out with the landlord as best she could and trying to keep the business open. She had quite a few real estate agents working in her brokerage. She was fearful that she would show up at her office one morning and the locks would have been changed. The broker would not have had any notice or opportunity to prevent this from occurring.

Assembly Bill 379 is simple. It requires a 3-day notice via certified mail to the commercial tenant prior to the landlord being able to change the locks. Originally, the bill had opposition in the Assembly, but those previously in opposition are now neutral.

Beverly Salhanick:

The purpose of A.B. 379 is to prevent the human errors that can have a catastrophic impact on small businesses. For example, the bookkeeper loses the check, posts the check to the wrong account on the landlord's behalf or something happens that leads the landlord to believe that the rent has not been paid; however, the rent has been paid. Assembly Bill 379 gives the tenant an opportunity to correct human errors and avoid being locked out without notice.

Jon Leleu (International Market Centers, LP)

International Market Centers is the owner of the World Market Center Las Vegas project located in downtown Las Vegas. World Market Center as a matter of practice already adheres to the process articulated in A.B. 379. It sends its tenants a certified notice that it intends to change the locks prior to doing so. We do this because most of our tenants are trade show tenants that are not physically located at the premises except during a trade show. The World Market Center determined it was a good business practice to notify its tenants

Senate Committee on Judiciary
May 14, 2015
Page 15

that the locks were being changed. Hopefully, this practice brings the tenants to the table to negotiate their leases on a fair basis. We are neutral on A.B. 379.

Assemblyman Ohrenschall:

I appreciate the Committee's time. We have addressed all of the concerns raised by the Assembly where the bill received unanimous support. I hope the Committee considers processing A.B. 379.

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Senate Committee on Judiciary
May 14, 2015
Page 16

Chair Brower:

We are adjourned at 10:46 a.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 325	C	3	Kim Spoon	Written Testimony
A.B. 325	D	12	Shelly Register	Written Testimony
A.B. 325	E	18	Shelly Register	Nation Guardianship Network Information
A.B. 325	F	17	Shelly Register	<i>A Model Code of Ethics for Guardians</i>
A.B. 325	G	34	Shelly Register	<i>Standards of Practice</i>
A.B. 325	H	16	Shelly Register	Center for Guardianship Certification
A.B. 325	I	1	Shelly Register	Link to Articles