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INFORMATIONAL LETTER #19

TO: County Patients' Rights Advocates and Interested Parties

FROM: The Office of Patients' Rights

RE: WIC Section 5270 Legislative Intent

DATE: February 9, 2004

This informational letter is in response to the questions that have been posted on the Patients' Rights Advocate List Serve, hosted by the Office of Patients' Rights. We have received many inquires regarding the California Office of Patients' Rights' position on Welfare & Institutions Code § 5270.

Although OPR has summarized the California Legislature's intent in enacting Welfare & Institutions Code ("WIC") §5270 on the list serve, we recognize that not all County Patients' Rights Advocate have access to and/or read the responses on the list serve. Therefore, we are summarizing OPR's opinion regarding WIC §5270 as an Informational Letter. We have excluded some background information and definitions with the assumption that Patients' Rights Advocates are familiar with this topic.

Stated Intent of WIC §5270

The stated intent of the Legislature concerning WIC §5270.10, is to "substantially reduce the number of conservatorships filed and temporary conservatorships granted under this part which do not result in either a trial or a conservatorship." The intent, is to reduce the number of WIC §5352, thirty day temporary conservatorship ("TCON") applications filed for "gravely disabled" individuals who may not require the supervision of a conservator, but nonetheless are determined to require additional treatment. There is no explicit statement as to whether Section 5270 was established for economic reasons.

Use of a WIC §5270 hold does not preclude conservatorship under WIC §5352, and the option of a TCON. The apparent legislative intent is not to replace TCONs with WIC §5270 holds, but instead, offer an alternative mechanism to hold an individual without having to appoint a conservator if such appointment is unnecessary.

WIC §5270 Compared to TCON

Summary

From a patients' rights perspective there are pros and cons to the use of the WIC §5270 procedures depending on the circumstances of the patient/client and the practices in the county. Patients' rights considerations include:

- Section 5270 allows extension of facility based treatment with more minimal procedural protections than would be required for a TCON. This may result in greater facility control of treatment decisions without the oversight of a conservator.
- Section 5270 holds can be no more than 30 days but a patient/client may be released in less time without the need to obtain additional court or conservatorship approval.
- TCONs require more extensive administrative procedures for establishing a hold and require a separate process for establishing a conservatorship and thus may provide more patient's/client's procedural protections.
- By virtue of appointing a conservator, TCONS necessarily create additional restrictions on an individual's rights.
- The 5270 provisions may be used to extend the time an individual is held in a facility to "buy" additional time for the patient/client to avoid a TCON and/or LPS conservatorship.

Procedural Similarities and Differences

From a procedural standpoint, WIC §5270 operates much like WIC §5250 &

§5260. The certification and facility-based probable cause hearing requirements are required for each successive new hold under each of the sections WIC § 5256. On the other hand, TCONs require a separate judicial process for conservator appointment, and require more extensive administrative procedures both for establishing a hold, and for releasing a patient prior to the expiration of the hold should a medical professional deem further treatment unnecessary.

A WIC §5270 hold is limited to thirty days and may not be extended. A TCON is also limited to thirty days, but may be extended for a period as long as six months.

Functional Similarities and Differences

Conservatorship, because it involves the imposition of legal restrictions, is not taken lightly by the Legislature. WIC §5354, states in pertinent part, “The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available” (emphasis added). It is clear that conservatorship is to be utilized only as a last resort.

It appears that by enacting WIC §5270 the legislature was creating an alternative to placing a person on a conservatorship. This hold essentially maintains the treatment status quo for an additional thirty days. It continues treatment in the same or similar facility and preserves continuity of care. A TCON on the other hand, gives the conservator the authority to make treatment decisions and presents a more likely possibility of the patient being removed from their present treatment environment to another treatment facility.

Essentially, conservatorships implicate numerous issues of personal liberty, legal procedure, and financial burdens. It appears that the Legislature wanted to avoid these additional issues when a patient’s treatment did not require the additional legal, personal, and financial burdens of a TCON.

Conclusion

The Legislature apparently intended for WIC §5270 to be an alternative to TCONs, not a replacement. The two operate differently and are used for different purposes. At the end of a WIC §5250 fourteen day hold, a treatment facility has the option of releasing a patient, asking for the patient’s voluntary admission to treatment, requesting a WIC §5250 suicide hold, requesting a WIC §5300 180-day

imminently dangerous person hold, requesting a WIC §5270 thirty day gravely disabled person hold, **or** applying for a TCON for a gravely disabled person.

The WIC §5270 hold allows a physician to apply an added period of time to provide treatment for a person. This can be used to either stabilize or determine treatment for a patient without the need to apply to have a conservator appointed. The key is that conservators are not required in all treatment situations. It appears that WIC §5270 was instituted because the Legislature realized that fourteen days may not necessarily be enough time to treat a patient or determine their further path of treatment, but such determination might be made within thirty days, and the determination or treatment should not always necessitate the appointment of a conservator.

This is the opinion of the California Office of Patients' Rights. If you are seeking a “Legal” opinion on this topic, you should consult with your County Counsel.