

OFFICE OF PATIENTS' RIGHTS

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MEMORANDUM

TO: Interested Persons

FROM: Darla Rucker, Patients' Rights Specialist

RE: Grave Disability Criteria

DATE: September 20, 1999

The Lanterman-Petris-Short Act (LPS) defines "grave disability" as:

A condition in which a person, as a result of a mental disorder, is unable to provide for his (or her) basic personal needs for food, clothing or shelter...

California Welfare & Institutions Code §5008(h)(1)

The person must be unable to provide for basic personal needs as a result of a mental disorder. Mere inability to provide for your own needs is not sufficient. Nor is refusal of treatment evidence of grave disability. Regardless of the person's history, the question is whether she/he is presently gravely disabled. Furthermore, even if a person cannot take care of basic personal needs by herself/himself, she/he is not considered gravely disabled if family members or others are willing and able to help her/him take care of her/his basic needs.

Grave Disability Narrowly Defined

Conservatorship of Chambers (1977) 71 Cal. App.3d 277, the California Court of Appeals, First Appellate District, held that the definition of "grave disability" was not unconstitutionally vague or overbroad. The court held that the standard is "sufficiently precise to exclude unusual or nonconformist lifestyles." *id.* At 284, and the "it requires a causal link between a specifically defined and diagnosed mental disorder and an inability to care for one's basic personal needs..." *Id.* at 285 (emphasis added).

Grave Disability Criteria

In the landmark case of *Doe v. Gallinot* (C.D. Cal. 1979) 486 F. Supp.1 983, aff'd (9th Cir. 1981) 657 F.2nd 1017, the court held that “standards for commitment to mental institutions are constitutional only if they require a finding of dangerousness to others or to self.” 486 F. Supp at 991 (citations omitted). They added that “[t]he threat of harm to oneself may be through neglect or inability to care for oneself.” id., quoting from Doremus v. Farrell (D. Neb. 1975) 407 F. Supp. 509, 515.

The Gallinot court determined that California’s present grave disability standard was not unconstitutionally vague in that it implicitly requires a finding of harm to self: an inability to provide for one’s basic physical needs. It further limits the standard to an inability arising from mental disorder rather than from other factors. 486 F. Supp. At 991 (emphasis added). The court cautioned, however, that the standard could be easily misapplied:

Even a well-intentioned person might find that certain standards of food, clothing, and shelter are “basic,” even though failure to meet them does not harm or endanger a person sufficiently to justify confinement. The standard does not expressly require a finding of dangerousness or harm... Furthermore, the determination whether one’s inability to care for oneself is rooted in mental disorder rather than other factors can be very difficult to make. For these reasons, there is a significant risk of erroneous application of the standard and due process requires a hearing to review probable cause for detention beyond the 72-hour emergency period.

Id. Thus, to support a finding of grave disability under Chambers and Gallinot, there must be a casual link between the person’s mental disability and her/his inability to provide for food, clothing and shelter AND the failure to meet these needs must result in physical danger or harm to the person.

Conservatorship of Smith (1986) 187 Cal. App.3d 903,232 Cal. Rptr. 277

The First District Court of Appeal stressed that a finding of grave disability must be supported by an “objective finding that the person, due to mental disorder, is incapacitated or rendered unable to carry out the transactions, necessary for survival or otherwise provide for her basic needs of food, clothing, or shelter.” 187 Cal.App.3d at 909. The court went on to state that “bizarre or eccentric behavior, even if it interferes with a person’s normal intercourse with society, does not rise to a level

warranting a conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival. Only then does the interest of the state override her individual liberty interests.” *id.*

A Present Finding of Grave Disability Is Required

Conservatorship of Murphy (1982) 134 Cal. App. 3d 15, 184 Cal.Rptr. 363

The Third District Court of Appeal reversed trial court’s reestablishment of LPS conservatorship on the basis that no evidence had been introduced as to whether Murphy was “presently” gravely disabled. Experts testified that Murphy was presently capable of managing his own affairs, i.e., providing for his own food, clothing and shelter needs. Rather, their determination that he was still gravely disabled was based on a “likelihood” that if he were released he would at some future time return to the use of alcohol. “The pivotal issue is whether Murphy was ‘presently’ gravely disabled, and the evidence demonstrated he was not.” 134 Cal. App.3d at 19 [Note: the court also indicated that the proper standard of review in such proceedings is the substantial evidence rule] (emphasis added)

Conservatorship of Benvenuto (1986) 180 Cal. App.3d 1030, 226 Cal.Rpts. 33

The Third District Court of Appeal, applying *Murphy, supra*, held that it was error to find the conservatee still gravely disabled on the basis of the possibility that if the conservatorship were discontinued, Benvenuto might cease taking his medication and quickly become gravely disabled. The court noted the “[i]f LPS conservatorship may be reestablished because of a perceived likelihood of future relapse, many conservatees who would not relapse will be deprived of liberty based on probabilistic pessimism. This cost is unwarranted in view of the statutory procedures available to rapidly invoke LPS conservatorship if required.” 180 Cal. App.3d at 1034, n.2 (citation omitted).

Evidence of Third Party Assistance Must Be Considered

Conservatorship of Davis (1981) 124 Cal. App.3d 313, 177 Cal. Rptr. 369

The Second District Court of Appeal held that a person is not gravely disabled within the meaning of the LPS Act “if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends, or third parties.” 124 Cal. Lapp.3d at 321. The court based its conclusion on a review of the statutory scheme, rules of the statutory construction, and the due process clauses of the federal and California constitutions.

Conservatorship of Wilson (1982) 137 Cal.App.3d 132, 186 Cal. Rptr. 748

Trial court had instructed the jury that gravely disabled means that the person is unable, unassisted, to provide for basic food, clothing and shelter needs on the basis of a mental disorder or chronic alcoholism. The Fourth District Court of Appeal reversed because the trial court had applied too narrow a definition, citing with approval *Conservatorship of Davis, supra*. The court went on to note that in modern society no one lives completely independently of everyone and everything, and that it was too much to ask a proposed conservatee to do so.

Grave Disability Criteria for Minors

The definition of “gravely disabled” is different for minors. California Welfare & Institutions Code §5585.25 defines it as; “a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others.

County advocates should consult with legal counsel designated by the county to represent and/or advise the advocate (often referred to as the County Counsel).

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