



SACRAMENTO LEGAL OFFICE
 100 Howe Avenue, Suite 235 North
 Sacramento, CA 95825-8202
 Telephone: (916) 488-9950
 Fax : (916) 488-9960
 TTY: (800) 719-5798
 Toll Free: (800) 776-5746

California's protection and advocacy system

LPS CONSERVATORSHIP

Daniel A. Pone, Senior Attorney

The provisions governing the establishment of conservatorships under the Lanterman-Petris-Short Act (LPS) are found at Welfare and Institutions Code (WIC) sections 5350 and following. A conservator of the person, of the estate, or of the person and estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. WIC §5350. "Gravely disabled" means that the person is, as a result of a mental disorder or, as a result of impairment by chronic alcoholism, unable to provide for their basic personal needs for food, clothing or shelter. WIC §5008(h)(1)(A),(2). The term "gravely disabled" does not include mentally retarded persons by reason of being mentally retarded alone. WIC § 508(h)(3). In order to be placed on an LPS conservatorship, the person must be found by a court or jury to be gravely disabled beyond a reasonable doubt. Conservatorship of Roulet (1979) 23 Cal.3d 219.

PURPOSE OF CONSERVATORSHIP

The purpose of conservatorship is "to provide individualized treatment, supervision, and placement." WIC §5350.1 The general role of conservators is addressed in the regulations which govern Continuing Care Services. Title 9, California Code of Regulations (CCR), §548. Conservatorship is defined as "service designed for the financial and personal protection of individuals deemed to be gravely disabled under the provisions of the [LPS] Act." 9 CCR §548(b). Conservatorship services include conservatorship administration, which means "services provided by a designated conservator to manage a conservatee's financial resources and to assure the availability and adequacy of

"Working in partnership with people with disabilities — to protect, advocate for and advance their human, legal and service rights; striving toward a society that values all people and supports their rights to dignity, freedom, choice and quality of life."

necessary treatment services and mental health social services." 9 CCR §548(b)(2). (Emphasis added.)

POWERS AND DUTIES OF CONSERVATORS

Conservatorship proceedings may be initiated for any person committed to a state hospital or local mental health facility or placed on outpatient treatment upon the recommendation of the professional person in charge of the facility or his/her designee to the conservatorship investigator of the county of residence of the person. WIC §5354 .If the conservatorship investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person to serve as conservator. WIC §5355. The public guardian shall serve as conservator of any person found by a court to be gravely disabled and in need of conservatorship only if the court finds no other person or entity willing and able to serve as conservator. WIC §§5354.5, 5356; see also Conservatorship of Walker (1987) 196 Cal.App.3d 1082.

Prior to the court hearing, the conservatorship investigator conducts an investigation and submits a report to the court which contains recommendations concerning "the powers to be granted to, and the duties to be imposed upon the conservator, the legal disabilities to be imposed upon the conservatee, and the proper placement for the conservatee... ." WIC §5356. The conservator has all the general powers that are set out in Probate Code sections 2400-2586 (powers of conservator of the estate), and any of the additional powers specified in Probate Code section 2591 as the court may designate. WIC §§5357, 5360. The powers referred to in Probate Code section 2591 all concern the conservatee's estate, and will not be discussed herein. The powers and duties of conservators which relate to placement and treatment of conservatees are detailed below.

Placement of Conservatees

Once a conservatorship is established, the court-appointed conservator is required to place the conservatee "in the least restrictive alternative placement, as designated by the court." WIC §5358(a). "If the conservatee is not to be placed in his or her own home or the home of a relative, first priority shall be given to placement in a suitable facility as close as possible to his or her home or the home of a relative." WIC §5358(c). The court's order must also indicate "those persons to be notified of a change of placement." Id.

Changes in a conservatee's court-ordered placement are governed by Welfare and Institutions Code section 5358(d), which provides as follows:

The conservator may transfer his or her conservatee to a less restrictive alternative placement without a further hearing and court approval. In any case in which a conservator has reasonable cause to believe that his or her conservatee is in need of immediate more restrictive placement because the condition of the conservatee has so changed that the conservatee poses an immediate and substantial danger to himself or herself or others, the conservator shall have the right to place his or her conservatee in a more restrictive facility or hospital. Notwithstanding Section 5328, if the change of placement is to a placement more restrictive than the court determined placement, the conservator shall provide written notice of the change of placement and the reason therefor to the court, the conservatee's attorney, the county patients' rights advocate and any other persons designated by the court pursuant to subdivision (c). (Emphasis added.)

Thus, Section 5358(d) makes it clear that the conservator is the only party authorized by the court to make changes in the conservatee's placement. If the conservator is notified by the person in charge of the facility serving the conservatee that the conservatee no longer needs the care or treatment offered by that facility, then the conservator is responsible for finding an alternative

placement within seven (7) days. WIC §5359. Extensions of up to 30 days or more may be possible in unusual circumstances. Id.

Consent to Treatment

In addition to setting forth recommendations regarding the powers and duties of the conservator, the investigator's report must also recommend for or against the imposition of a number of specific disabilities on the proposed conservatee, including:

(d) The right to refuse or consent to treatment related specifically to the conservatee's being gravely disabled. The conservatee shall retain all rights specified in Section 5325.

(e) The right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. The court shall make a specific determination regarding imposition of this disability.

WIC §5357(d),(e).

With respect to the conservator's rights to consent to the conservatee's receiving treatment, WIC Code section 5358(b) provides as follows:

A conservator shall also have the right, if specified in the court order, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled, or to require his or her conservatee to receive routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. Except in emergency cases in which the conservatee faces loss of life or serious bodily injury, no surgery shall be performed upon the conservatee without the conservatee's prior consent or a court order obtained pursuant to Section 5358.2, specifically authorizing that surgery.

Section 5358.2 provides:

If a conservatee requires medical treatment and the conservator has not been specifically authorized by the court to require the conservatee to receive medical treatment the conservator shall,

"Working in partnership with people with disabilities — to protect, advocate for and advance their human, legal and service rights; striving toward a society that values all people and supports their rights to dignity, freedom, choice and quality of life."

after notice to the conservatee, obtain a court order for that medical treatment, except in emergency cases in which the conservatee faces loss of life or serious bodily injury. The conservatee, if he or she chooses to contest the request for a court order, may petition the court for hearing which shall be held prior to granting the order.

In this regard, the California Attorney General has issued an opinion which indicates that the specific procedures set forth in Sections 5357, 5358, and 5358.2 constitute the exclusive means by which the conservator is given the power to make necessary medical decisions for LPS conservatees. 60 Ops.Atty.Gen. 375 (1975) Moreover, the California Court of Appeal for the First Appellate District has held that where a conservator is uncertain whether his existing authorization from the court applies to a particular proposed medical treatment, he should resolve his doubts in favor of making further application to the court. Foy v. Greenblott (1983) 141 Cal.App.3d 1.

F:\DOCS\PUBS\ENGLISH\5082.01

07/15/96