

# Dementia Conservatorship

## Probate Code Section 2356.5

Note: When this publication was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008, we changed our name from PAI to Disability Rights California.

### WHAT IS DEMENTIA CONSERVATORSHIP?

Dementia Conservatorship is when a judge appoints someone to decide where a person with dementia lives. The person appointed by the judge is called a conservator.

### HOW IS DEMENTIA DEFINED?

The Probate Court refers to the definition of dementia in the last published edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). The DSM-IV states that the essential features of dementia are memory impairment and at least one of the following: aphasia (Impairment in language skills), apraxia (impairment in motor activities), agnosia (inability to recognize objects) or a disturbance in executive functioning (such as abstract thinking).

Dementia may be associated with Alzheimer's disease, Parkinson's disease, Huntington's disease or HIV, among other conditions.

### WHERE DO I HAVE A RIGHT TO LIVE IF PUT ON DEMENTIA CONSERVATORSHIP?

- You have a right to receive assistance in the most integrated setting appropriate to your needs.
- A dementia conservator has the right to place you in either (1) a secured perimeter residential care facility for the elderly or (2) a secured nursing facility that

specializes in care for people with dementia.

- You **cannot** be placed in a Mental Health Rehabilitation Center nor in an Institution for Mental Disease (IMD).

### WHEN WOULD I BE PUT ON DEMENTIA CONSERVATORSHIP?

A court may appoint a dementia conservator upon finding all of the following by clear and convincing evidence:

- You have been diagnosed with dementia.
- You have been found to lack capacity to give informed consent to placement in the recommended facility.
- You have been found to have at least one mental function deficit that significantly impairs your ability to understand and appreciate the consequences of your actions.
- You need or would benefit from the placement.
- The court finds that it would be the least restrictive placement appropriate to your needs.

### WHAT OTHER RIGHTS MAY I LOSE UNDER THE DEMENTIA CONSERVATORSHIP?

A dementia conservator may authorize the administration of appropriate medications. A court would have to find all of the following by clear and convincing evidence:

- The conservatee has dementia.
- The conservatee lacks capacity to give informed consent to medications.
- The conservatee has at least one mental function deficit that significantly impairs the person's ability to understand and



appreciate the consequences of his or her actions.

- The conservatee would benefit from the medications as demonstrated by a physician or psychologist.

### **WHAT IF I OBJECT TO MEDICATIONS BASED ON MY RELIGIOUS BELIEFS?**

If you adhere to a religion whose beliefs call for reliance on prayer alone for healing, the treatment required must be by an accredited practitioner of that religion in lieu of the administration of medications.

### **HOW IS A DEMENTIA CONSERVATORSHIP ESTABLISHED?**

A dementia conservatorship is established under Probate Code 2356.5 and is similar to other Probate Conservatorships [See PAI Probate Conservatorship Brochure]. There are a few differences for dementia conservatorships as follows:

- The proposed conservatee must attend the hearing, with limited exceptions.
- The petition must be supported by a declaration of a licensed physician or licensed psychologist regarding each of the findings required and any power requested.
- The petition may be filed by a proposed conservator, proposed conservatee, or any spouse, relative or friend of the proposed conservatee.
- The court investigator must investigate and report to the court every two years rather than every year. The investigator

must ask the conservatee if he or she objects to any powers granted or rights denied under the conservatorship. If the conservatee objects or the investigator determines that some change is warranted, then the investigator has a duty to report this to the conservatee's attorney of record. If no attorney has been appointed, one must be appointed under Probate Code Section 1470.

- Within 30 days after receiving a report from an investigator, the attorney must either petition for a hearing on the status of the conservatee or file a report with the court stating that the petition would be inappropriate. A petition to terminate the dementia conservatorship is governed by Probate Code Section 2359, which applies to Probate Conservatorships generally.

### **HOW CAN I CHALLENGE BEING PUT ON A DEMENTIA CONSERVATORSHIP?**



- Present evidence that a secured facility is not the least restrictive setting appropriate for you.
- Show that you are not at risk for getting lost. This could be done by use of assistive technology, family or staff support.
- Talk with the local

independent living center about resources that are available to support you at your home or the home of a family member or friend.

**If you have any questions, contact  
Your Attorney  
or  
You may also call  
Protection & Advocacy, Inc.  
Toll Free: 1-800-776-5746**