

## RESOLUTION 02-05-2014

### DIGEST

Probate: Elimination of Requirement to Define “Mental Health Treatment Facility”

Amends Probate Code section 2356 to eliminate the unfollowed mandate that the State Director of Mental Health issue regulations defining the term “mental health treatment facility.”

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Probate Code section 2356 to eliminate the unfollowed mandate that the State Director of Mental Health issue regulations defining the term “mental health treatment facility.” This resolution should be approved in principle because it eliminates an unnecessary provision that has not been acted upon.

Since this language was enacted, no definition of “mental health treatment facility” has been promulgated. Moreover, such a definition likely cannot be promulgated in the future: The Department of Mental Health no longer exists as a separate department, and thus there is no State Director of Mental Health to issue the regulations called for by the statute.

Retaining the current language of the statute needlessly suggests to litigants that they must search the California Code of Regulations for that definition, when none exists. Removing this language will make it clear to litigants that the undefined terms carry their common and ordinary meanings. (*Halbert’s Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 [undefined terms in statutes carry their “ordinary, everyday meaning”].)

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 2356 to read as follows:

#### § 2356

1 (a) No ward or conservatee may be placed in a mental health treatment facility under this  
2 division against the will of the ward or conservatee. Involuntary civil placement of a ward or  
3 conservatee in a mental health treatment facility may be obtained only pursuant to Chapter 2  
4 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of  
5 Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the  
6 placing of a ward in a state hospital under Section 6000 of the Welfare and Institutions Code  
7 upon application of the guardian as provided in that section. ~~The Director of Mental Health shall~~  
8 ~~adopt and issue regulations defining "mental health treatment facility" for the purposes of this~~  
9 ~~subdivision.~~

10 (b) No experimental drug as defined in Section 111515 of the Health and Safety Code  
11 may be prescribed for or administered to a ward or conservatee under this division. Such an  
12 experimental drug may be prescribed for or administered to a ward or conservatee only as  
13 provided in Article 4 (commencing with Section 111515) of Chapter 6 of Part 5 of Division 104  
14 of the Health and Safety Code.

15 (c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions

16 Code may be performed on a ward or conservatee under this division. Convulsive treatment may  
17 be performed on a ward or conservatee only as provided in Article 7 (commencing with Section  
18 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.  
19 (d) No minor may be sterilized under this division.  
20 (e) This chapter is subject to a valid and effective advance health care directive under the  
21 Health Care Decisions Law (Division 4.7 (commencing with Section 4600)).

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Contra Costa County Bar Association

#### **STATEMENT OF REASONS**

The Problem: Since at least 1990, Section 2356 has mandated the issuance of regulations defining "mental health treatment facility". No regulations have been issued. No known problems have arisen due to the lack of regulations. Having a statute mandate regulations that have not, and evidently will not, be issued, creates uncertainty and increases legal expense when attorneys try to find regulations which have never been issued.

The Solution: This resolution would eliminate the mandate for regulations.

#### **LEGISLATIVE HISTORY**

Not known.

#### **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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**RESPONSIBLE FLOOR DELEGATE:** Don Green

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### **SECTION COMMENTS TO RESOLUTION 02-05-2014**

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#### **TRUST AND ESTATE SECTIONS TO THE STATE BAR OF CALIFORNIA**

APPROVE.

#### **Disclaimer:**

**This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.**