

RESOLUTION 05-05-2013

DIGEST

Conservatorships: Recommendation of Mental Health Evaluation by Probate Court
Amends Welfare & Institutions Code §5352 to allow the Court to recommend a Lanterman-Petris-Short conservatorship where a probate conservatorship has already been established.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This Resolution amends Welfare and Institutions Code section 5352 to allow the court to recommend a Lanterman-Petris-Short (“LPS”) conservatorship where a probate conservatorship has already been established. This resolution should be approved in principle because it would allow a court to recommend that the appropriateness of establishing an LPS conservatorship be investigated by the probate investigator.

The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for an individual who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. The establishment of an LPS conservatorship allows for the involuntary commitment of an individual to a psychiatric facility, where the individual may receive treatment which the individual would not or could not otherwise choose to receive due to the individual’s grave disability. This resolution would allow the court to recommend to the officer providing conservatorship investigations that an LPS conservatorship be considered based on facts the court has in front of it. Currently, only a professional from the agency or facility providing intensive treatment or evaluation services may make a recommendation to the conservatorship investigator for an LPS conservatorship based on specific findings of an individual’s level of disability. However, if that individual is not currently undergoing treatment or has not otherwise been evaluated, there may be no agency recommendation for services, and the individual may not receive necessary treatment. Family members and the court are currently prohibited from initiating a petition for the appointment of an LPS conservator as this right is vested by statute solely in the conservatorship investigator.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Welfare & Institutions Code Section 5352, to read as follows:

- 1 §5352
- 2 When the professional person in charge of an agency providing comprehensive
- 3 evaluation or a facility providing intensive treatment determines that a person in his care is
- 4 gravely disabled as a result of mental disorder or impairment by chronic alcoholism and is
- 5 unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend

6 conservatorship to the officer providing conservatorship investigation of the county of residence
7 of the person prior to his admission as a patient in such facility.

8 The professional person in charge of an agency providing comprehensive evaluation or a
9 facility providing intensive treatment may recommend conservatorship for a person without the
10 person being an inpatient in such facility, if both of the following conditions are met: (a) the
11 professional person or another professional person designated by him has examined and
12 evaluated the person and determined that he is gravely disabled; (b) the professional person or
13 another professional person designated by him has determined that future examination on an
14 inpatient basis is not necessary for a determination that the person is gravely disabled.

15 When a court in a conservatorship established under the Probate Code determines that a person
16 for whom a conservatorship of the person has been established under the Probate code may be
17 gravely disabled as a result of a mental disorder or impairment by chronic alcoholism or
18 substance abuse and is unwilling to accept, or incapable of accepting treatment voluntarily, the
19 court may recommend conservatorship under this Article to the officer providing conservatorship
20 investigation of the county of residence of the person. Within thirty (30) days after the referral,
21 the officer providing conservatorship investigation shall file a copy of its report with the court in
22 the Probate conservatorship making the recommendation.

23 If the officer providing conservatorship investigation concurs with the recommendation,
24 he shall petition the superior court in the county of residence of the patient to establish
25 conservatorship.

26 Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in
27 the petition. The officer providing conservatorship investigation or other county officer or
28 employee designated by the county shall act as the temporary conservator.

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

PROPONENT: San Bernardino County Bar Association

STATEMENT OF REASONS

The Problem: Under the current language of Welfare and Institutions Code section 5352, only a professional person in charge of an agency providing intensive psychiatric treatment can recommend an LPS (Lanterman-Petris-Short) conservatorship that would include involuntary treatment or psychiatric hold. There is a “gap” between the provisions for involuntary treatment in LPS and Probate Conservatorships. Probate Code section 2356.5 only allows for treatment of a conservatee in a secured facility, or involuntary administration of psychotropic medications, when the conservatee has a diagnosis of dementia and not for any mental health diagnosis. Accordingly, many conservatees simply do not receive appropriate care and treatment for their mental disorder because they have not already been hospitalized in a psychiatric facility to receive a professional evaluation.

This Solution: This resolution will permit a superior court in an existing probate conservatorship to make a referral for evaluation for an individual who may be gravely disabled as a result of his/her mental disorder, and an LPS conservatorship may be warranted. In this way, a conservatee who might benefit from treatment can avoid the usual path to an LPS

conservatorship which is repeated hospitalization in a psychiatric facility. Early and sustained treatment can be provided in conjunction with a Probate Conservatorship.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

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

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