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LPS Conservatorship

What is a mental health conservatorship?

A mental health conservatorship occurs when a judge appoints a *conservator* who is responsible for making decisions about a *conservatee's* psychiatric treatment and placement. The conservator may also be responsible for the financial affairs of the conservatee and/or have the power to force the conservatee to receive medical treatment.

What is the purpose of a mental health conservatorship?

The purpose of a mental health or a Lanterman Petris Short (LPS) Conservatorship is to provide individualized treatment, supervision and placement for someone who is unable to care for themselves due to a mental health problem. The goal of a conservatorship is to provide treatment to increase the conservatee's ability to take care of themselves.

How does a mental health conservatorship begin?

In Santa Clara County, a psychiatrist makes a written recommendation to the Public Guardian's Office which will file a petition in court. The psychiatrist must state you are *gravely disabled*. ("Gravely disabled" means that you cannot provide for your personal needs such as food, clothing and shelter without assistance because of a mental disorder and there is no willing and responsible family member or friend available to assist you to meet your basic needs) and must also state that you are unwilling and unable to accept treatment voluntarily.

What is a temporary conservatorship?

After the petition is filed, you may be placed on a temporary conservatorship, which can last up to thirty days. During this period your case is investigated by the Public Guardian's Office which reviews the medical evidence and determines whether a permanent conservatorship is necessary. The temporary conservator may decide where you will live (such as in a hospital) but they cannot sell or relinquish property. A temporary conservatorship does not always mean you will be permanently conserved. It may be that the doctor wants to continue your treatment and you are unwilling or unable to stay in the hospital voluntarily.

What are my rights on a temporary conservatorship?

You are entitled to placement which is least restrictive of your liberty. However, if it is determined that you need psychiatric hospitalization, your conservator can hospitalize against your wishes. If you are hospitalized and want to be released, you are entitled to a writ of habeas corpus (a court hearing to decide whether there is sufficient legal reason for you remain hospitalized). If you cannot afford an attorney to represent you in the writ, the court will appoint a Public Defender for you. If the judge orders your release from the hospital, your release will usually, but not always, mean that your conservatorship will be dropped.

While you are on a temporary conservatorship, you have the right consent to or refuse psychiatric medication. If you refuse medications, your psychiatrist may request that the temporary conservator petition the Superior Court to conduct a hearing to decide whether you should have to take the medications the psychiatrist recommends. Unless your behavior becomes seriously dangerous to yourself or others, you cannot be forced to take medications until a judge orders that you do. Even when you are conserved, you retain all other patient rights, including the right to keep and use your own belongings, and the right to visitors.

What is a permanent conservatorship and what are my rights?

A permanent conservatorship must be ordered by a judge after a hearing. It is similar to a temporary conservatorship in that you may lose the right to choose where you live and the right to refuse psychiatric treatment, including medication. You may also lose the right to enter into contracts, the right to vote, the right to own a gun, and the privilege to possess a driver's license. You may also lose the right to handle your money or make financial decisions for yourself. A conservatorship may last up to one year.

Who makes decisions about my medical care?

If specified by the court, the conservator may also have right to make medical decisions for you about an existing or continuing medical condition you have. If you retain the right to make decisions about your medical care and the conservator wants to force you into medical treatment, they must go to court where you have a right to a hearing (unless it is an emergency in which your life is at risk or you may incur serious bodily injury if not treated promptly).

What are my legal rights if I disagree with conservatorship?

Before you can be permanently conserved, you are entitled to a hearing in court *and* a court or jury trial. If you cannot afford an attorney to represent you at the hearing or trial, the court will appoint a Public Defender's Office to represent you. At either the hearing or the trial, the county must prove to the judge (or jury), BEYOND A REASONABLE DOUBT, that you are gravely disabled. You must request a trial *within five days of the court hearing* in order to receive one. If you request a trial before the court hearing you will have only one court date instead of two. If a trial is requested, the court may extend your temporary conservatorship for up to six months. If you lose at your trial, you are entitled to appeal. You must file your appeal within 60 days of the judge's order. You have the right to have another hearing to challenge your conservatorship at any time and then once every 6 months. If you ask for a rehearing, *you* must prove that you are no longer gravely disabled. The doctor or your conservator may ask the court to drop your conservatorship at any time.

What are my legal rights if I disagree with what my conservator is doing?

You may go to court to contest the powers of your conservator or the manner in which the conservator is acting, and you may also go to court to have some of your rights restored. For instance, you may go to court to request release from the hospital or placement in another facility a "least restrictive placement hearing." You may also go to court to request to restore back to you the right to make medical decisions on your own behalf or the right to vote. Once you go to court to challenge a conservator's power or ask that a right be restored to you, you cannot go to court again on a similar issue for 6 months. Anytime you have a court date, you may ask that family and friends be notified of the hearing. Also, you may choose not to attend any court hearing after consulting with you attorney.

What happens after a year is up?

Your conservatorship automatically expires at the end of year unless the conservator, with the recommendation by the psychiatrist, petitions for reappointment. If a petition for reappointment is not filed, the facility must release you at the end of your conservatorship. Sixty days prior to its expiration, the court must send you and your conservator notification that your conservatorship is soon to expire. Your conservator must petition for reappointment of your conservatorship 30 days prior to its end. If there is a petition to reappoint your conservator, you have the right to another evidentiary hearing, a court or jury trial, and an appeal.

What are my legal rights if my conservatorship is dropped?

All rights you may have lost are restored to you.

DISCLAIMER: This fact sheet is intended to provide accurate, general information regarding legal rights. It does not constitute legal advice. Because laws and legal procedures are subject to frequent change and differing interpretations, Mental Health Advocacy Project cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights for your particular case.