

## RESOLUTION 05-06-05

### DIGEST

#### Conservatorships: Placement of Conservatee in a Mental Health Facility

Amends Probate Code section 4617 to allow an agent or Conservator to place a person for a mental health evaluation and stabilization.

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Probate Code section 4617 to allow an agent or Conservator to place a person for a mental health evaluation and stabilization. This resolution should be disapproved because it grants too much authority on an agent under an Advance Health Care Directive without any of the safe guards provided under Welfare & Institutions Code sections 5150-5157.

When the mentally ill and disabled are allowed to decompensate to the point of requiring placement in a mental health facility or unit pursuant to Welfare & Institutions Code section 5150, it has an overall negative effect on not just their mental, but physical health also, and usually takes additional time for the individual to recover. However, Welfare & Institutions Code sections 5150-5157 provide certain safe guards to limit any constitutional or civil rights violation for the placed individual. A probate Conservator is subject to court scrutiny to limit the conservator from taking actions that are against the best interest of the conservatee and counsel for the conservatee could be appointed to protect the conservatee's rights. But, an agent under an Advance Health Care Directive usually does not have legal counsel advising them what actions are appropriate and no one is monitoring the actions of the agent for the protection of the placed individual. Therefore, even though the resolution may be beneficial in conservatorships, it is too broad and fails to protect the rights of an individual who signed an Advance Health Care Directive without the protection of the court or legal counsel.

### SECTION/COMMITTEE REPORTS

### TRUSTS & ESTATES COMMITTEE RECOMMENDATION

DISAPPROVE

The proponent's rationale for this proposal is the difficulty in obtaining qualified persons to take action in a §5150 case due to budget cuts. While budget cuts have undoubtedly impacted this area, the remedy proposed by this resolution is far too broad and raises the specter of confinement of individuals subject to conservatorship or who have executed a health care power of attorney with little or no restrictions. The Section believes that individuals would hesitate to execute a power of attorney if the individual knew that the designated agent had the power to involuntarily confine the principal.

*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 Governors 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.*

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 4617 to read as follows:

1 § 4617

1 "Health care decision" means a decision made by a patient or the patient's agent,  
2 conservator, or surrogate, regarding the patient's health care including the following:  
3 (a) Selection and discharge of health care providers and institutions.  
4 (b) Approval or disapproval of diagnostic tests, surgical procedures, and programs of  
5 medication.  
6 (c) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other  
7 forms of health care, including cardiopulmonary resuscitation.  
8 (d) Placement in a mental health facility, designated by the county and approved by the  
9 State Department of Mental Health, for a period not to exceed seventy-two (72) hours solely for the  
10 purpose of evaluation and stabilization, provided the patient has previously been diagnosed with a  
11 mental illness and/or mental disability.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

Existing law: Specifically does not permit an agent under an Advanced Health Care Directive or a conservator to involuntarily place their principal or conservatee in a mental health facility for any purpose.

This Resolution: Would permit an agent or conservator to involuntarily place a principal or conservatee in a mental health facility for a period not to exceed seventy-two (72) hours for the sole purpose of evaluation and stabilization if the principal or conservatee had been previously diagnosed with a mental illness or disability.

The Problem: If an individual has been diagnosed with a mental health illness or disability, is taking medication and then decompensates, the only alternative is to 5150 them as currently set forth in the Welfare and Institutions Code. However, this is a drastic procedure, difficult to obtain and time consuming to the point of being potentially dangerous for the individual and/or the public.

IMPACT STATEMENT:

This resolution affects Probate Code sections 2356.5, 4652 and 4701 and Welfare and Institutions Code section 5150.

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RESPONSIBLE FLOOR DELEGATE: Kim R. Hubbard

**COUNTERARGUMENTS**

**BAR ASSOCIATION OF SAN FRANCISCO**

This resolution should be disapproved for the same reasons as stated with respect to Resolutions 03-11-05, 05-07-05, and 05-08-05. There is no reason to give the power to involuntarily commit a principal to a conservator or an attorney-in-fact under an advanced health care directive.

**SAN DIEGO COUNTY BAR ASSOCIATION**

This amendment and the amendments proposed in companion resolutions 5-07-05, 5-08-05 and 5-09-05 are unnecessary and create the potential for abuse of the rights of conservatees. Conservators may now take conservatees to a mental health facility and/or call the police, and they have authority to recommend placement in the facility for evaluation and stabilization. The amendment would also create another hurdle to the establishment of conservatorships. Proposed conservatees are likely to be less willing to accept a

conservator if the conservator has the authority to place them in a mental health facility absent the recommendation of a mental health professional.