

Introduced by Senator JacksonFebruary 2, 2016

An act to amend Section 2356.5 of the Probate Code, relating to protective proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 938, as introduced, Jackson. Protective proceedings: conservator authorizations.

Existing law authorizes a conservator to place a conservatee in a secured perimeter residential care facility, as specified, or to administer certain prescribed medications upon a court's finding that among other things, the conservatee has dementia and a functional impairment. Existing law requires certain findings to be made by the court for each type of authority sought by the conservator and requires a petition for authority to be supported by a declaration of a licensed physician or psychologist, as specified, regarding these findings.

This bill would replace references to the term dementia in these provisions with major neurocognitive disorders (MNCDS). The bill would prohibit the placement of a conservatee in an acute psychiatric hospital and psychiatric health facility, as specified. The bill would require petitions requesting the authority to administer certain prescribed medications to be supported by a declaration of a licensed physician, psychiatrist, or psychologist that includes specified information including, among other things, the reasons for the request, information regarding the rationale for the proposed medication, and information regarding the conservatee's overall mental health assessment and treatment plan. The bill would require the Judicial Council, on or before July 1, 2017, to adopt rules of court and develop appropriate forms for

the implementation of these provisions, as specified. The bill would make additional findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2356.5 of the Probate Code is amended
2 to read:

3 2356.5. (a) The Legislature hereby finds and declares:

4 (1) ~~That people with dementia,~~ *conservatees with major*
5 *neurocognitive disorders (MNCDs)*, as defined in the last published
6 edition of the “Diagnostic and Statistical Manual of Mental
7 Disorders,” should have a conservatorship to serve their unique
8 and special needs.

9 (2) *Common forms of MNCDs are known as Alzheimer’s disease,*
10 *vascular dementia, dementia with Lewy bodies, Parkinson*
11 *dementia, frontotemporal dementia, and mixed dementia.*

12 ~~(2)~~

13 (3) That, by adding powers to the probate conservatorship for
14 ~~people with dementia,~~ *conservatees with MNCDs*, their unique
15 and special needs can be met. This will reduce costs to the
16 conservatee and the family of the conservatee, reduce costly
17 administration by state and county government, and safeguard the
18 basic dignity and rights of the conservatee.

19 ~~(3) That it is the intent of the Legislature to recognize that the~~
20 ~~administration of psychotropic medications has been, and can be,~~
21 ~~abused by caregivers and, therefore, granting powers to a~~
22 ~~conservator to authorize these medications for the treatment of~~
23 ~~dementia requires the protections specified in this section.~~

24 (4) *Psychotropic medications or psychotropic drugs are those*
25 *medications administered for the purpose of affecting the central*
26 *nervous system to treat psychiatric disorders or illnesses. These*
27 *medications include, but are not limited to, anxiolytic agents,*
28 *antidepressants, mood stabilizers, antipsychotic medications,*
29 *anti-Parkinson agents, hypnotics, medications for dementia, and*
30 *psychostimulants.*

31 (5) *Psychotropic medications are often misused for people with*
32 *MNCDs to control behavior that conveys pain, distress, or*
33 *discomfort.*

1 (6) *Since 2005, the federal Food and Drug Administration has*
2 *required the packaging of all antipsychotic medications, which*
3 *fall under a class of psychotropic medication, to contain a black*
4 *box warning label that the medication significantly increases the*
5 *risk of death for elderly people with MNCDs.*

6 (7) *Recent studies have shown that, in many instances,*
7 *psychotropic drugs are outperformed by placebos and can actually*
8 *worsen the cognitive ability of a person with an MNCD.*

9 (8) *The administration of psychotropic medications has been,*
10 *and can be, abused by caregivers.*

11 (9) *Therefore, granting powers to a conservator to authorize*
12 *these medications for the treatment of an MNCD requires the*
13 *protections specified in this section.*

14 (b) Notwithstanding any other law, a conservator may authorize
15 the placement of a conservatee in a secured perimeter residential
16 care facility for the elderly operated pursuant to Section 1569.698
17 of the Health and Safety Code, and which has a care plan that
18 meets the requirements of Section 87705 of Title 22 of the
19 California Code of Regulations, upon a court’s finding, by clear
20 and convincing evidence, of all of the following:

21 (1) The conservatee has ~~dementia~~, *an MNCD* as defined in the
22 last published edition of the “Diagnostic and Statistical Manual of
23 Mental Disorders.”

24 (2) The conservatee lacks the capacity to give informed consent
25 to this placement and has at least one mental function deficit
26 pursuant to subdivision (a) of Section 811, and this deficit
27 significantly impairs the person’s ability to understand and
28 appreciate the consequences of his or her actions pursuant to
29 subdivision (b) of Section 811.

30 (3) The conservatee needs or would benefit from a restricted
31 and secure environment, as demonstrated by evidence presented
32 by the physician or psychologist referred to in paragraph (3) of
33 subdivision (f).

34 (4) The court finds that the proposed placement in a locked
35 facility is the least restrictive placement appropriate to the needs
36 of the conservatee.

37 (c) Notwithstanding any other law, a conservator of a person
38 may authorize the administration of medications appropriate for
39 the care and treatment of ~~dementia~~, *an MNCD*, upon a court’s
40 finding, by clear and convincing evidence, of all of the following:

1 (1) The conservatee has ~~dementia~~, *an MNCD*, as defined in the
2 last published edition of the “Diagnostic and Statistical Manual of
3 Mental Disorders.”

4 (2) The conservatee lacks the capacity to give informed consent
5 to the administration of medications appropriate to the care of
6 ~~dementia~~, *the MNCD*, and has at least one mental function deficit
7 pursuant to subdivision (a) of Section 811, and this deficit or
8 deficits significantly impairs the person’s ability to understand and
9 appreciate the consequences of his or her actions pursuant to
10 subdivision (b) of Section 811.

11 (3) The conservatee needs ~~or would benefit from~~ appropriate
12 medication as demonstrated by evidence presented by the ~~physician~~
13 *licensed physician, psychiatrist, or psychologist* referred to in
14 paragraph ~~(3)~~ (4) of subdivision (f).

15 (d) Pursuant to subdivision (b) of Section 2355, in the case of
16 a person who is an adherent of a religion whose tenets and practices
17 call for a reliance on prayer alone for healing, the treatment
18 required by the conservator under subdivision (c) shall be by an
19 accredited practitioner of that religion in lieu of the administration
20 of medications.

21 (e) A conservatee who is to be placed in a facility pursuant to
22 this section shall not be placed in a mental health rehabilitation
23 center as described in Section 5675 of the Welfare and Institutions
24 Code, ~~or in~~ an institution for mental disease as described in Section
25 5900 of the Welfare and Institutions ~~Code~~. *Code, an acute*
26 *psychiatric hospital as described in subdivision (b) of Section 1250*
27 *of the Health and Safety Code, or a psychiatric health facility as*
28 *described in subdivision (a) of Section 1250.2 of the Health and*
29 *Safety Code.*

30 (f) A petition for authority to act under this section is governed
31 by Section 2357, except:

32 (1) The conservatee shall be represented by an attorney pursuant
33 to Chapter 4 (commencing with Section 1470) of Part 1. Upon
34 granting or denying authority to a conservator under this section,
35 the court shall discharge the attorney or order the continuation of
36 the legal representation, consistent with the standard set forth in
37 subdivision (a) of Section 1470.

38 (2) The conservatee shall be produced at the hearing, unless
39 excused pursuant to Section 1893.

1 (3) The petition *requesting authority under subdivision (b)* shall
2 be supported by a declaration of a licensed physician, or a licensed
3 psychologist within the scope of his or her licensure, regarding
4 each of the findings required to be made under this section for any
5 power requested, except that the psychologist has at least two years
6 of experience in diagnosing ~~dementia~~ MNCDs.

7 (4) *The petition requesting authority under subdivision (c) shall*
8 *be supported by a declaration of the licensed physician,*
9 *psychiatrist, or psychologist, and provide all of the following:*

10 (A) *The reasons for the request.*

11 (B) *A description of the conservatee's diagnosis and behavior.*

12 (C) *The expected results of the medication.*

13 (D) *A description of any side effects of the medication.*

14 (E) *Whether the conservatee and his or her attorney have had*
15 *an opportunity to provide input on the medications being*
16 *prescribed.*

17 (F) *Information regarding the conservatee's overall mental*
18 *health assessment and treatment plan.*

19 (G) *Information regarding the rationale for the proposed*
20 *medication, provided in the context of past and current treatment*
21 *efforts, including, but not limited to, information on other*
22 *pharmacological and nonpharmacological treatments that have*
23 *been utilized and the conservatee's response to those treatments,*
24 *a discussion of symptoms not alleviated or ameliorated by other*
25 *current or past treatment efforts, and an explanation of how the*
26 *psychotropic medication being prescribed is expected to improve*
27 *the conservatee's symptoms.*

28 (5) *On or before July 1, 2017, the Judicial Council shall adopt*
29 *rules of court and develop appropriate forms for the*
30 *implementation of this section, and shall provide guidance to the*
31 *court on how to evaluate the request for authorization, including*
32 *how to proceed if information, otherwise required to be included*
33 *in a request for authorization under this section, is not included*
34 *in a request for authorization submitted to the court.*

35 ~~(4)~~

36 (6) The petition may be filed by any of the persons designated
37 in Section 1891.

38 (g) The court investigator shall annually investigate and report
39 to the court every two years pursuant to Sections 1850 and 1851
40 if the conservator is authorized to act under this section. In addition

1 to the other matters provided in Section 1851, the conservatee shall
2 be specifically advised by the investigator that the conservatee has
3 the right to object to the conservator's powers granted under this
4 section, and the report shall also include whether powers granted
5 under this section are warranted. If the conservatee objects to the
6 conservator's powers granted under this section, or the investigator
7 determines that some change in the powers granted under this
8 section is warranted, the court shall provide a copy of the report
9 to the attorney of record for the conservatee. If no attorney has
10 been appointed for the conservatee, one shall be appointed pursuant
11 to Chapter 4 (commencing with Section 1470) of Part 1. The
12 attorney shall, within 30 days after receiving this report, do one
13 of the following:

14 (1) File a petition with the court regarding the status of the
15 conservatee.

16 (2) File a written report with the court stating that the attorney
17 has met with the conservatee and determined that the petition
18 would be inappropriate.

19 (h) A petition to terminate authority granted under this section
20 shall be governed by Section 2359.

21 (i) Nothing in this section shall be construed to affect a
22 conservatorship of the estate of a person who has ~~dementia~~ *an*
23 *MNCD*.

24 (j) Nothing in this section shall affect the laws that would
25 otherwise apply in emergency situations.

26 (k) Nothing in this section shall affect current law regarding the
27 power of a probate court to fix the residence of a conservatee or
28 to authorize medical treatment for any conservatee who has not
29 been determined to have ~~dementia~~ *an MNCD*.