

AMENDED IN SENATE MARCH 15, 2016

SENATE BILL

No. 938

Introduced by Senator Jackson

February 2, 2016

An act to amend Section 2356.5 of the Probate Code, relating to ~~protective proceedings:~~ *conservatorships*.

LEGISLATIVE COUNSEL'S DIGEST

SB 938, as amended, Jackson. ~~Protective proceedings: conservator authorizations.~~ *Conservatorships: psychotropic drugs.*

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, physician 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 recommended course of medication, the expected*

effects of the recommended medication on the conservatee’s overall mental health and treatment plan, including how the medication is expected to improve the conservatee’s symptoms, and a description of the potential side effects of the recommended medication. 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 conservatees with major *or mild* neurocognitive
5 disorders (MNCDS), as defined in the last published edition of the
6 “Diagnostic and Statistical Manual of Mental Disorders,” should
7 have a conservatorship to serve their unique and special needs.

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

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

18 (4) Psychotropic medications or psychotropic drugs are those
19 medications administered for the purpose of affecting the central
20 nervous system to treat psychiatric disorders or illnesses. ~~These~~
21 ~~medications include, but are not limited to, anxiolytic agents,~~
22 ~~antidepressants, mood stabilizers, antipsychotic medications,~~
23 ~~anti-Parkinson agents, hypnotics, medications for dementia, and~~
24 ~~psychostimulants.~~

25 (5) Psychotropic medications are often misused for people with
26 MNCDS to control behavior that conveys pain, distress, or
27 ~~discomfort. discomfort and the administration of psychotropic~~

1 *medications has been and can be abused by those who prescribe*
2 *and administer these medications.*

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

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

11 ~~(8) The administration of psychotropic medications has been,~~
12 ~~and can be, abused by caregivers.~~

13 ~~(9)~~

14 (8) Therefore, granting powers to a conservator to authorize
15 these medications for the treatment of an MNCD requires the
16 protections specified in this section.

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

24 (1) The conservatee has an MNCD as defined in the last
25 published edition of the "Diagnostic and Statistical Manual of
26 Mental Disorders."

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

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

37 (4) The court finds that the proposed placement in a locked
38 facility is the least restrictive placement appropriate to the needs
39 of the conservatee.

1 (c) Notwithstanding any other law, a conservator of a person
2 may authorize the administration of *psychotropic* medications
3 ~~appropriate for the care and treatment of~~ *to a conservatee with an*
4 MNCD, upon a court's finding, by clear and convincing evidence,
5 of all of the following:

6 (1) The conservatee has an MNCD, as defined in the last
7 published edition of the "Diagnostic and Statistical Manual of
8 Mental Disorders."

9 (2) The conservatee lacks the capacity to give informed consent
10 to the administration of *psychotropic* medications ~~appropriate to~~
11 ~~the care of the~~ *for the treatment of an* MNCD, and has at least one
12 mental function deficit pursuant to subdivision (a) of Section 811,
13 and this deficit or deficits significantly impairs the person's ability
14 to understand and appreciate the consequences of his or her actions
15 pursuant to subdivision (b) of Section 811.

16 (3) The conservatee needs appropriate medication as
17 demonstrated by evidence presented by the ~~licensed physician,~~
18 ~~psychiatrist,~~ *physician* or psychologist referred to in paragraph ~~(4)~~
19 ~~(3) of subdivision (f):~~ (e).

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

26 ~~(e) A conservatee who is to be placed in a facility pursuant to~~
27 ~~this section shall not be placed in a mental health rehabilitation~~
28 ~~center as described in Section 5675 of the Welfare and Institutions~~
29 ~~Code, an institution for mental disease as described in Section~~
30 ~~5900 of the Welfare and Institutions Code, an acute psychiatric~~
31 ~~hospital as described in subdivision (b) of Section 1250 of the~~
32 ~~Health and Safety Code, or a psychiatric health facility as described~~
33 ~~in subdivision (a) of Section 1250.2 of the Health and Safety Code.~~

34 ~~(f)~~

35 (e) A petition for authority to act under this section is governed
36 by Section 2357, except:

37 (1) The conservatee shall be represented by an attorney pursuant
38 to Chapter 4 (commencing with Section 1470) of Part 1. Upon
39 granting or denying authority to a conservator under this section,
40 the court shall discharge the attorney or order the continuation of

1 the legal representation, consistent with the standard set forth in
2 subdivision (a) of Section 1470.

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

5 (3) The petition requesting authority under subdivision (b) *or*
6 *(c)* shall be supported by a declaration of a ~~licensed~~ physician, or
7 a ~~licensed~~ psychologist within the scope of his or her licensure,
8 regarding each of the findings required to be made under this
9 section for any power requested, except that the psychologist has
10 at least two years of experience in diagnosing MNCDs. *The*
11 *supporting declaration for a petition requesting authority under*
12 *subdivision (c) shall also include all of the following:*

13 ~~(4) The petition requesting authority under subdivision (c) shall~~
14 ~~be supported by a declaration of the licensed physician,~~
15 ~~psychiatrist, or psychologist, and provide all of the following:~~

16 ~~(A) The reasons for the request.~~

17 ~~(B)~~

18 (A) A description of the conservatee's diagnosis and behavior.

19 (B) *The recommended course of medication.*

20 (C) *A description of the pharmacological and*
21 *nonpharmacological treatments and medications that have been*
22 *previously used or proposed, the less invasive treatments or*
23 *medications used or proposed, and why these treatments or*
24 *medications have not been or would not be effective in treating*
25 *the conservatee's symptoms.*

26 ~~(C)~~

27 ~~(D) The expected results of the medication: effects of the~~
28 ~~recommended medication on the conservatee's overall mental~~
29 ~~health and treatment plan, including how the medication is~~
30 ~~expected to improve the conservatee's symptoms.~~

31 ~~(D)~~

32 (E) A description of ~~any~~ *the potential* side effects of the
33 *recommended* medication.

34 ~~(E)~~

35 (F) Whether the conservatee and his or her attorney have had
36 an opportunity to provide input on the ~~medications being~~
37 ~~prescribed: recommended medications.~~

38 ~~(F) Information regarding the conservatee's overall mental~~
39 ~~health assessment and treatment plan.~~

1 ~~(G) Information regarding the rationale for the proposed~~
2 ~~medication, provided in the context of past and current treatment~~
3 ~~efforts, including, but not limited to, information on other~~
4 ~~pharmacological and nonpharmacological treatments that have~~
5 ~~been utilized and the conservatee's response to those treatments,~~
6 ~~a discussion of symptoms not alleviated or ameliorated by other~~
7 ~~current or past treatment efforts, and an explanation of how the~~
8 ~~psychotropic medication being prescribed is expected to improve~~
9 ~~the conservatee's symptoms.~~

10 ~~(5)~~

11 (4) On or before July 1, 2017, the Judicial Council shall adopt
12 rules of court and develop appropriate forms for the implementation
13 of this section, and shall provide guidance to the court on how to
14 evaluate the request for authorization, including how to proceed
15 if information, otherwise required to be included in a request for
16 authorization under this section, is not included in a request for
17 authorization submitted to the court.

18 ~~(6)~~

19 (5) The petition may be filed by any of the persons designated
20 in Section 1891.

21 ~~(g)~~

22 (f) The court investigator shall annually investigate and report
23 to the court every two years pursuant to Sections 1850 and 1851
24 if the conservator is authorized to act under this section. In addition
25 to the other matters provided in Section 1851, the conservatee shall
26 be specifically advised by the investigator that the conservatee has
27 the right to object to the conservator's powers granted under this
28 section, and the report shall also include whether powers granted
29 under this section are warranted. If the conservatee objects to the
30 conservator's powers granted under this section, or the investigator
31 determines that some change in the powers granted under this
32 section is warranted, the court shall provide a copy of the report
33 to the attorney of record for the conservatee. If no attorney has
34 been appointed for the conservatee, one shall be appointed pursuant
35 to Chapter 4 (commencing with Section 1470) of Part 1. The
36 attorney shall, within 30 days after receiving this report, do one
37 of the following:

38 (1) File a petition with the court regarding the status of the
39 conservatee.

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

4 ~~(h)~~

5 (g) A petition to terminate authority granted under this section
6 shall be governed by Section 2359.

7 ~~(i)~~

8 (h) Nothing in this section shall be construed to affect a
9 conservatorship of the estate of a person who has an MNCD.

10 ~~(j)~~

11 (i) Nothing in this section shall affect the laws that would
12 otherwise apply in emergency situations.

13 ~~(k)~~

14 (j) Nothing in this section shall affect current law regarding the
15 power of a probate court to fix the residence of a conservatee or
16 to authorize medical treatment for any conservatee who has not
17 been determined to have an MNCD.

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