

Understanding the Lanterman-Petris-Short (LPS) Act

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Chapter 2: LPS Conservatorships

LPS Conservatorship is a legal mechanism in which the court appoints a person to make certain legal decisions for you. This person is called a conservator. Your conservator may be able to make decisions such as whether you can start or stop taking psychiatric medications or accept other medical treatment. A conservator may also manage your money and decide where you will live. When you are on conservatorship, the court may limit your right to vote, to enter into contracts, to drive, or to own a firearm. The LPS conservatorship can last for a maximum of one year at a time, but it can be renewed in court at the end of the year.

The purpose of conservatorship is, "to provide individualized treatment, supervision, and placement." WIC § 5350.1. Conservatorship is defined as, "service designed for the financial and personal protection of individuals deemed to be gravely disabled under the provisions of the [LPS] Act." 9 CCR § 548(b). Conservatorship services include conservatorship administration, which means, "services provided by a designated conservator to manage a conservatee's financial resources and to assure the availability and adequacy of necessary treatment services and mental health social services." 9 CCR § 548(b)(2).

Conservatorship and "Grave Disability"

Your doctor or person responsible for your care may begin conservatorship proceedings if they believe that you have become, and are likely to continue to be "gravely disabled." This is a legal term that means you are at

risk of physical harm because you are unable to provide food, clothing and shelter for yourself due to a mental health disorder. WIC § 5008.

Many factors can affect whether a court may find someone gravely disabled. For instance, someone incapable of caring for herself, but who can survive safely with the help of a willing third party, would likely not be gravely disabled. See WIC § 5250(d) on 14-day certification holds, and WIC § 5350(e) on conservator appointments. Also, though past acts may be considered, someone is not gravely disabled unless they are a **present** danger to themselves because of their inability to provide self-care. The likelihood of future harm may also not be enough to meet commitment criteria. See *Conservatorship of Benevuto*, 180 Cal.App.3d 1030 (1986).

Conservatorship Procedure

In the case your doctor or care provider believes you may be gravely disabled, they may make a recommendation to the Public Guardian's office to start a conservatorship investigation. Not everybody that meets the definition of gravely disabled is automatically put on conservatorship.

An investigator will decide whether or not to request the court to start a conservatorship. WIC § 5354. If the investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person to serve as conservator. WIC § 5355. If a petition is filed to begin a conservatorship, someone must give you a copy and tell you the time for the conservatorship hearing in court.

Temporary Conservatorship

If you are in the hospital and are on a 14-day hold, at the end of the hold, you may be put on a temporary conservatorship for 30 days. WIC § 5352. To put you on temporary conservatorship, the court must believe that you are gravely disabled. The court may restrict some of your rights, like the right to choose a place to live, to have a driver's license, etc. You continue to have the right to refuse any medical treatment that the court has not ordered.

You are supposed to receive notice before the temporary conservatorship is established, but often people don't learn they are on temporary conservatorship until after they have been put on it.

When someone is placed on a temporary conservatorship, it is the duty of the Public Guardian's office to investigate whether someone needs to be on a full LPS conservatorship.

If you know ahead of time that you are being considered for a temporary conservatorship, you can try to demonstrate that you do not fit the definition of "gravely disabled." You can do this by showing that you will be able to secure food, clothing, and shelter. If possible, try to demonstrate these things to your care provider or social worker, so that they may decide not to recommend putting you on conservatorship.

Permanent Conservatorship

Beyond a temporary conservatorship, a court may also place you on a "permanent" conservatorship. Technically, no conservatorship is permanent, but it may be renewed yearly (also known as "reestablishment"), and there is no limit to how many times it may be renewed. See the section below on "Ending a Conservatorship" to learn more about conservatorship renewal.

To be placed on a conservatorship, a professional person must first evaluate you and determine that you are both gravely disabled **and** unwilling or incapable of accepting treatment voluntarily. WIC § 5352. In addition to this, the conservatorship investigator must investigate all possible alternatives to conservatorship, and only recommend conservatorship if there are no suitable alternatives. WIC § 5354.

At a conservatorship hearing, a representative of the Public Guardian's office will be in court and will tell the judge or jury why they think you need to be on conservatorship. At the hearing, the court will decide whether you need to be placed on conservatorship, as well as which rights you will retain and which rights you will lose as a result of the conservatorship.

In the case that the court places you on conservatorship, your conservator can be a friend or a family member. You may nominate who you would like to be your conservator, but it's up to the judge to decide the most suitable person or agency for your conservatorship. WIC § 5355. If the court finds no person or agency is able or willing to serve as your conservator, the court will appoint your county Public Guardian. WIC § 5354.5.

Challenging a Conservatorship

Right to a Jury Trial

You have the right to request a jury trial to determine whether you are gravely disabled. However, you do not get a jury trial by default. **You must make your request for a jury trial within five (5) days after the hearing on your conservatorship petition.** If you request a jury trial before that hearing, the request constitutes a waiver of the hearing. WIC § 5350(d)(1).

If you select a jury trial, a jury must be unanimous in finding you gravely disabled before you may be put on conservatorship. And the evidence presented at trial must prove grave disability beyond a reasonable doubt. See *Sorenson v. Superior Court* (App. 6 Dist. 2013) 161 Cal.Rptr.3d 794, 219 Cal.App.4th 409.

Your trial should occur within ten (10) days of your request, though the court may continue it for a period of no more than fifteen (15) days if requested by your counsel.

Courtroom Tips

- When in court, dress as neatly as possible.
- Even if you disagree and feel angry about what might be said about you in court, it is important to remain calm.
- Be ready to explain in court how you will be able to take care of your basic needs, including having food, clothes, and a place to live.
- If you know someone who will testify on your behalf, especially by helping you with food, clothing, and a place to stay, try to make sure they will show up in court for your hearing.
- You should be prepared to tell the judge what kind of mental health or medical treatment you would get and where you would go to get it.

General Tips

You have the **right to an attorney**, and if you do not have an attorney, the court will appoint one for you. Usually a court-appointed attorney will be a public defender. The court must appoint an attorney within five days after the date of the petition for conservatorship. WIC § 5365. You can discuss

with your attorney the possibility of having the court appoint an independent psychiatrist separate from the hospital to evaluate you and to give another opinion as to whether you really need conservatorship.

You should be prepared to tell the judge why you are not gravely disabled. Develop a detailed plan to show how you would provide for your own food, clothing and shelter. Address the "who," "what," "where," "when," and "how."

You don't have to own your own home or have your own apartment to prove you have a place to live. Even if another person, such as a friend or relative, is willing to give you a place to stay, this can help you beat the conservatorship. See *Conservatorship of Jesse G.*, 248 Cal. App. 4th 453, 460, 203 Cal. Rptr. 3d 667, 672 (2016). This is called "third party assistance," and can be used to challenge conservatorship. The person should provide a written statement for the judge describing their willingness to help you. WIC § 5350(e).

Some people even find that good use of community resources such as food banks and community shelters can help them stay off conservatorship. If you have a good doctor or therapist in the community, it may be helpful to get them to testify for you on your behalf.

If you plan on receiving Social Security or other benefits, you should explain to the judge that you know how to sign up for and receive those benefits.

Placement While on Conservatorship

Once the court appoints a conservator, the conservator must decide where you will live. The conservator's first priority is to place you in the least restrictive appropriate placement. WIC § 5351(a)(1)(A). This may include your own home or the home of a relative. If that is not an option, the next priority would be to place you in a suitable facility as near as possible to either your or a relative's home. WIC § 5351(c)(1). Possible alternative placements may include a state or county hospital or similar facility. WIC § 5358(a)(2).

Your conservator may move you to a less restrictive setting without having to provide notice to the court. Your conservator may also move you to a **more restrictive** setting, but must provide written notice to the court, your

attorney, the county patients' rights advocate, and any other designated person. Your conservator may move you to a more restrictive setting if they have reason to believe your condition has changed such that it requires more restrictive placement, or that you have become an immediate danger to yourself or others. WIC § 5358(d)(1).

It should be noted that placement requirements are different if your initial commitment was related to a felony involving death or serious bodily injury. WIC § 5008(h)(1)(b). In that case, among other considerations, placement will prioritize treatment as well as protecting public safety. WIC § 5358(a)(1)(B). See also WIC § 5358(c)(2) and WIC § 5358(d)(2).

Challenging Your Conservatorship Placement

When you are on a conservatorship, your conservator usually has the power to decide where you will live. That does not mean that you are completely at the mercy of your conservator. If you and your conservator disagree about your placement, you can go back to court to challenge the appropriateness of your placement. This is called having a **placement review hearing**. You can request a placement review hearing in the county where the conservatorship was established or the county where you are living. WIC § 5358.7. However, once you go back to court for a placement review hearing, you must wait another six months before having another one. See WIC 5358(d)(4) and WIC § 5358.3.

At a placement review hearing, you are only asking the judge to review the appropriateness of your placement, not whether you should be on a conservatorship. The best way to get a placement review hearing is to contact the attorney who represented you at your conservatorship hearing. If you did not have money to pay for an attorney, you were probably represented by a court-appointed attorney. Most court-appointed attorneys are public defenders.

Your social worker should have the name and phone number of your court-appointed attorney. You can also call the patients' rights advocate to find out how to contact your attorney. When you call your attorney, give your full name and date of birth. If your attorney is not in the office, ask if you can leave a message. Be sure to leave your name, date of birth, name of facility where you are living, phone number where you can be reached, and the

best time to reach you. Also make sure to say that you are requesting a placement review hearing.

You should give your attorney at least two weeks to try to contact you. If your attorney fails to contact you, you can file your own petition with the court requesting a placement review hearing.

Ending a Conservatorship

Even if you lose your conservatorship hearing or trial, there are things you can do to challenge your placement into a conservatorship.

Rehearings

You can **petition** (ask) the court for a rehearing to see whether you should be on a conservatorship. If you ask, you are entitled to a rehearing as to whether you should be on a conservatorship at all. At a rehearing, you have the burden of proving that you are not gravely disabled. You do not have the right to a jury trial at the rehearing. WIC § 5364. Also be aware that once you have had your rehearing, you may not request another rehearing for six months. WIC § 5364.

The easiest way to request a rehearing is to contact the lawyer who represented you when you were placed on conservatorship. Tell the lawyer that you would like to petition the court for a rehearing.

Writ of Habeas Corpus

The United States Constitution allows anyone who believes they are being held illegally by the government (including by a conservator) to file a "**writ of habeas corpus**" to challenge the confinement. There is also a special law in California that allows any state hospital patient to file a writ. WIC § 7250. Ask your lawyer or advocate for assistance.

Annual Conservatorship Renewal

After each full year of conservatorship, the county must decide whether to drop the conservatorship or to ask the court to renew it. If the county decides to renew your conservatorship, you may challenge it and ask for a new trial before a judge or a jury. WIC § 5362.

Rights during a Conservatorship

If you are in the hospital under a LPS conservatorship, you have the same rights as other people to wear your own clothes, to make confidential phone calls, to receive unopened correspondence, to have visitors daily, to have individual storage space, to keep reasonable amounts of your own money for canteen expenses, and other rights. WIC § [5325](#).¹ Your conservator does not have the power to restrict or limit these rights in any way.

A judge may limit certain rights based on the recommendations of the person who investigated whether you should be put on a conservatorship. These include your right to vote, have a driver's license, enter into contracts, refuse to consent to routine medical treatment, and refuse to consent to treatment related to being gravely disabled. WIC § 5357.

If you feel you have been forced to live in a place that is too restrictive for your needs, or the conservator has been given too much power over your life, you can ask for a hearing in court to review these things. Be aware that once you have filed this petition, the court will not accept another petition until six months after your last petition. WIC § 5358(d)(4) and WIC § 5358.3.

Additionally, a conservator can't require you to go through any surgery unless you're at risk of death or serious bodily injury, with the exception that you've either given prior consent or a court has issued an order allowing that specific surgery. WIC § 5358(b). If you want to contest the request for a court order, you may petition the court for a hearing to be held prior to granting the order. WIC § 5358.2.

¹ Please note that if you are placed in a state hospital or are in jail, some of these rights may be different. ["Return to Main Document"](#)

**ATTACHMENT:
PLAN OF ACTION TO CHALLENGE CONSERVATORSHIP TO
SHOW THAT I AM NOT "GRAVELY DISABLED"**

**[FILL OUT FORM AND GIVE TO YOUR ATTORNEY
AND THE CONSERVATOR]**

1. Name. Address. Case number, if known.

2. My monthly income is _____. I get the money from _____
_____. This could include, Social Security Income (SSI), Veteran's Benefits, or work income.

3. I plan to live at this address. I own the property, or I will spend this amount of money for rent.

4. I will provide for my food this way. I will spend this amount of money on food.

5. I will provide for my clothing this way. I will spend this amount of money on clothing.

6. There could be friends or family that can help me by providing for my food, clothing and shelter. Their names and how to contact them is listed. (*Be sure to attach a written note from the person willing to help that says that they are willing to help and have them state how to reach them.)

7. If I need treatment, I am willing to get treatment from this person or agency.

8. I can get to my appointments or meetings this way.

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