

Santa Barbara County and Mental Health Conservatorships

A Lanterman-Petris-Short (LPS) conservatorship is a civil legal process, governed by California Welfare and Institutions Code (WIC), for a person who is gravely disabled. It is a court order which gives someone or some entity (the conservator) the authority to authorize treatment, and placement intended to treat the client's mental illness. A Murphy conservatorship is for individuals who have a mental illness, are incompetent to stand trial and have an outstanding violent felony charge.

Gravely disabled is a legal status, evidenced by the substantial inability to provide for food, clothing, or shelter without assistance, as a result of mental disorder, and is unwilling or incapable of accepting treatment voluntarily and unassisted. For example, if a person is unable to provide for his own shelter but voluntarily accepts board & care placement, he is not necessarily gravely disabled. However, if the board & care provides shelter and food, but he refuses to eat because he hears voices saying that the food is poisoned, then he is unable to provide for his own food, indicating grave disability. The law indicates that homelessness in and of itself is not an indicator of grave disability.

Referrals

Per the law, the Behavioral Wellness (BW) Medical Director initiates all initial LPS conservatorship referrals to the Santa Barbara County Public Guardian (PG). A psychiatrist, usually in the Psychiatric Health Facility (PHF) but it can be any psychiatrist, identifies an individual whom they believe is gravely disabled. This is usually evidenced by an individual being repeatedly hospitalized. The psychiatrist sends the individuals' information to Medical Director for review and if he approves, a formal referral is created and sent to the PG.

Incompetent to Stand Trial (IST) referrals are exception to this. Felony ISTs are transported to State Hospital and if they return as non-restorable, a Judge orders LPS and Murphy conservatorship investigations. For Murphy conservatorships, violent felony charges must remain in place for an individual to qualify. For Misdemeanor IST's, after the court establishes the individual is non-restorable, a judge orders an LPS investigation only; misdemeanors do not qualify for Murphy conservatorships. The court order comes to the PG and the BW Medical Director. A BW psychiatrist interviews the individual and sends a report to the PG. A preliminary investigation and report are completed for the criminal court. If the individual does not meet the legal criteria, conservatorship is not an option. The bar for IST is guided by criminal laws; LPS is guided by WIC and has totally different criteria. If conservatorship is recommended, the PG petitions in LPS civil court.

The PG reviews LPS referrals and forwards them to County Counsel. They generate a petition for Temporary LPS Conservatorship (Tcon) and get a hearing date, usually the following week. The individual has a right to notice at least five days prior. A Public Defender is assigned to represent the individual. The Judge reviews the evidence before granting the Tcon. Once granted, another hearing date is set for 30 days later.

When the Tcon is established, the PG gets the signed Tcon Order and Letters granting authority to begin an investigation.

Investigation

LPS investigations evaluate if an individual meets legal criteria for conservatorship. The psychiatrist's evaluation is just one piece of evidence. Investigations include:

- Interviewing the Temporary Conservatee, (the Investigator asks for a release of confidential information so she can speak freely to family and friends. Without this release, the Investigator legally may only receive information from family/friends, but cannot provide information.)
- Consulting with mental health staff.
- Obtaining relevant documentation (e.g., hospital records).
- Speaking to individuals familiar with the Temporary Conservatee if given a release.

If a private party is interested in becoming conservator, the conservator's role, the responsibilities, expectations and legal parameters are explained, providing a realistic picture of what to expect.

The Public Defender's Investigator meets with the individual to explain conservatorship and inquire if they agree to have someone else make treatment decisions for them.

The PG Investigator's Report is filed with the court recommending whether or not the proposed conservatee meets the legal requirement of grave disability, warranting conservatorship and, if so, recommends the most appropriate conservator. The assigned Judge hears the case at the 30-day hearing.

Hearing for Establishment

At the hearing for either the LPS or Murphy establishment, if the investigator's recommendation is that the individual does not meet criteria, the Judge makes the decision to not grant conservatorship.

If the recommendation states the criteria for grave disability is satisfied, there is a recommendation of who the conservator should be. If the individual agrees, it is granted.

If the individual contests, they have the right to a Court or jury trial and a date is set. In a Court trial the Judge hears the evidence and makes the final decision or a jury does in a jury trial. LPS evidence must show grave disability "beyond a reasonable doubt" as of that moment, which is the legal threshold. Murphy evidence must also include a doctor who will testify that the individual is violent.

If granted, the conservator is required to place the conservatee in the least restrictive, available placement, which is ordered by the judge. Six months after establishment, a conservatee has the right to a rehearing to establish if they are still gravely disabled and/or a placement hearing to establish if they are in the least restrictive, available placement.

Murphy conservatees are almost always ordered to be placed at the State Hospital. Due to the fact that they are violent, they await placement in jail.

As conservatees are the sickest of the sick, the recommendation of BW is often the highest level of care. LPS conservatees are placed, in descending order of most restrictive: State Hospital, Institutes for Mental Disease (IMD), Locked Skilled Nursing Facility, Skilled Nursing Facility, Locked Board & Care, Board & Care, Room & Board and Independent.

With the exception of State Hospitals and IMDs, all placements are privately owned; they can choose who they want to accept. The number of beds is finite yet the number of very sick individuals continues to grow, resulting in more PHF days.

Responsibilities and Duties of an LPS Conservator

- It is the treating psychiatrist and clinical team, usually BW, who recommends the most appropriate placement and treatment for the client's illness. Just as you consult with your doctor in making treatment decisions, the conservator consults with BW in decision making regarding counseling, encouraging treatment and medications. Each conservatee is a BW client and has an assigned BW case manager.
- The conservator's charge is to authorize this treatment, by consenting for medication and signing the placement documentation, even if it is against the client's wishes. The Court found that the conservatee needed someone else to direct their treatment, but this is done with as much respect and dignity as possible.
- The Letters of Conservatorship are the court order.
- An LPS conservator does not have the authority to authorize medical treatment; the conservatee retains that right. Additional authority from the court must be obtained for the conservator to act for medical issues.

LPS & Murphy Reestablishment

LPS and Murphy conservatorships automatically expire in one year. The court presumes mental health treatment and intervention have successfully remedied the conservatee's grave disability. Therefore, a conservator seeking reestablishment must provide evidence that grave disability is ongoing in order to reestablish the conservatorship.

Conservators and BW case managers plan ahead for termination or reestablishment. During the year, they provide increasing opportunities for the conservatee to regain their independence, such as placement in a less restrictive setting to document the conservatee's level of functioning without conservatorship.

Prior to the expiration of the conservatorship, the conservatee's doctors and BW case manager/clinic staff make a recommendation to the conservator whether the conservatee remains gravely disabled and provides doctor declarations as evidence.

The reestablishment court process is the same as the initial establishment; the conservatee is represented by the Public Defender, and can contest and, if so, the conservatee must be present at reestablishment. See: "Hearing for Establishment" above.

A legal resource for the Lanterman-Petris-Short Act is:
CA WELFARE & INSTITUTIONS CODE Sections 5000 ~ 5579.
This can be found at: <http://leginfo.legislature.ca.gov>