

Conservatorship Dementia Medical Treatment & Placement

David W. Tate, CPA, Esq.
<http://davidtate.us>

California courts are more closely scrutinizing conservatorship requests for authority to administer dementia medications, and to place a conservatee in a secured or locked facility. The Probate Code contains specific pleading and evidentiary requirements when these issues are present. Although the specific requirements add complexity to conservatorship proceedings, the provisions are designed to protect the conservatee's constitutional and personal rights. In some cases these provisions can present the Judge with a "tough call" scenario.

In summary, California Probate Code §2356.5 provides that the Court can grant authority to place a conservatee in a secured parameter residential care facility if the Court finds, by clear and convincing evidence, all of the following:

- The conservatee has dementia;
- The conservatee lacks the capacity to give informed consent to placement;
- The conservatee needs or would benefit from a restricted or secure environment as demonstrated by evidence presented by a physician or psychologist; and
- The proposed placement in a locked facility is the least restrictive placement appropriate.

Probate Code §2356.5 further provides that the Court can grant authority for the administration of medications for the care and treatment of dementia if the Court finds, by clear and convincing evidence, all of the following:

- The conservatee has dementia;
- The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia; and
- The conservatee needs or would benefit from that medication as demonstrated by evidence presented by a physician or psychologist.

Section 2356.5 further provides that the petition shall be supported by a sufficient declaration by an appropriate licensed physician or psychologist, and that the provisions of §2357, which is discussed below, shall govern the petition for authority to act under §2356.5.

California Probate Code §2357 provides in pertinent part that with respect to medical treatment issues, the petition shall state or set forth by medical affidavit all of the following so far as known to the petitioner at the time the petition is filed:

- The nature of the medical condition which requires treatment;
- The recommended course of medical treatment which is considered to be medically appropriate;
- The threat to the health of the conservatee if authorization to the consent of the recommended course of treatment is delayed or denied by the Court;
- The predictable or probable outcome of the recommended course of treatment;
- The medically available alternatives, if any, to the course of treatment recommended; and
- Efforts made to obtain an informed consent from the conservatee.

The conservatee is entitled to be represented by an attorney, and is entitled to have the issues set for an evidentiary hearing unless the attorney for the conservatee decides to stipulate that there remains no issue or fact to be determined, and that the matter may be submitted to the Court upon proper and sufficient medical declarations. In other words, in cases where the issues are not clear, it may very well be appropriate to have the evidence, including the testimony of the physician or psychologist presented in Court, with the opportunity for cross-examination.

We are seeing more cases where Courts are requiring added careful analysis of the issues and the evidence, and conservators are expected to provide clear and convincing evidence, meeting statutory requirements, that dementia medications and secured parameter facilities are necessary and in the best interests of the conservatee.

This information does not provide legal or other professional advice, does not constitute solicitation for or engagement of services inside or outside of California, and does not apply to any particular person, entity or circumstance. These materials are a summary of information, are not an exhaustive reference source, and are subject to modification at any time. You should not rely upon this information for your situation, and I specifically disclaim liability for the information contained in this article. You should seek appropriate, licensed professional advice if you are involved in a situation that relates to these or similar issues.