

Overview of The CA State Association of Public Administrators, Public Guardians, and Public Conservators

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Today's Speaker – Scarlet Hughes



Scarlet Hughes was appointed the Executive Director of the California State Association of Public Administrators, Public Guardians, and Public Conservators on September 6, 2016. Prior to serving as the Executive Director of CA PA|PG|PC, she served as the San Joaquin County Public Guardian/Conservator for 13 years, where she was responsible for the day-to-day operations of the LPS and Probate conservatorship programs and the county's Representative Payee program.

Prior to her move to San Joaquin County, Scarlet worked in the Sacramento County Public Administrator/Public Guardian/Public Conservator's office for 17 years, as a Deputy Public Guardian/Public Conservator, Supervising Deputy Public Guardian/Public Conservator and eventually as a Manager.

Scarlet received a Bachelor of Science degree in Psychology in 1981 and a Masters of Social Work in May 1995, from California State University, Sacramento.

Learning Objectives

To inform NAPSA members of:

- The purpose of and services provided by the CA PAPGPC Assn. to its membership
- The role, function, structure and purpose of County Public Administrators, Public Guardians, and Public Conservators

Table of Contents

- Overview of CA PA|PG|PC
- Definitions
- Public Administrator Function
- Probate Conservatorship
- LPS Conservatorship
- General Information
- Wrapping UP

Who/What is CA PA | PG | PC?



- Non-profit association representing the Public Administrators, Guardians and Conservators from each of California's 58 counties
- Is the certifying body legally responsible for the accreditation of all California County PA|PG|PCs and their staff
- Our mission is to foster communication between counties, provide education and certification to its members, and provide legislative advocacy on behalf of individuals served by these programs

CA PA | PG | PC's Exec. Office

- Office opened in September 2016
- Previously
 - Ran by all volunteer Executive Board
 - No professional/consistent presence in Sacramento
- Legislators and many partners unaware of our Assn. or complexity of our profession
- Legislation created affecting our members without our voice

DEFINITIONS

What Is the Public Administrator?

- The Public Administrator (PA) investigates and may administer the estates of persons who die with no will or without an appropriate person willing or able to act as administrator
- In some counties, the PA also administers the county's indigent burial program
- The PA may be organized under the Sheriff/Coroner, Treasurer/Tax Collector, the District Attorney, or with the Public Guardian/Conservator



Description Of Guardianship

- Guardianship exists as a protective mechanism for minors
- The PG appointed when a minor has a large estate and there is no responsible adult available to manage the assets on the minor's behalf
- Guardianships terminates upon death of the ward, by court order, or when the ward reaches the age of majority (18 years old)

What Is the Public Guardian/Conservator?



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- The PG/PC conducts the official county investigation into conservatorship matters, including forensic cases (incompetent to stand trial)
- The PG/PC acts as the legally appointed guardian or conservator for persons found by Superior Court to be unable to properly care for themselves or their finances or who are unable to resist undue influence or fraud
- Clients served by the PG/PC usually suffer from severe mental illness or are older, frail, dependent and vulnerable adults

Facts about Conservatorship



- Appointed by the County Superior Court
- Two types – LPS and Probate
- Can be granted authority over “Person” and/or “Estate”
- No state or federal funding for Probate Cons.
 - Generally, Co. Gen. Fund and Client fees
 - Most fees are never collected
- LPS Programs receive limited Mental Health Realignment funds from CA State Depart of MH



PA Historical Overview

- The first P.A. Office was created in California in 1890
- P.A. function is mandated in CA and all 58 counties have a P.A.
- P.A. Probate provisions were established to address abandoned property
- Probate procedures and laws are determined by the California Probate Code and local laws



PA Function Overview

- Performs the same duties and functions as a private administrator for a decedent and their estate if/when needed
- Investigates referrals to locate family and/or safeguard assets
- Financial elder abuse investigations
- May administer the County's Indigent Burial or Cremation Program

Overview Of Specific PA Duties

- Protect the decedent's estate assets from loss, injury, waste or misappropriation (PC §7601)
- Conduct PA investigations for assets
- Make appropriate funeral and burial arrangements
- Ensure all assets are collected
- Liquidate real estate and personal property
- Manage creditors
- Administer estate according to the decedent's wishes
- Distribution of property



PROBATE CONSERVATORSHIP



Probate Cons. Criteria

- Probate Conservatorship of the person
 - Unable to properly provide for his/her personal needs for physical health, food, clothing, or shelter
- Probate Conservatorship of the estate
 - Substantially unable to manage his/her own financial resources or resist fraud or undue influence
- Usually Conservatorship of both person and estate is obtained by the Public Guardian/Conservator

Probate Cons. Criteria

- **Is a legal determination (not medical):**
 - Facts must show a course of conduct that proves inability to “properly provide” for personal needs and/or failure to “substantially” manage financial resources
- **Most Probate Conservatorships are granted for:**
 - Individuals with some form of dementia or cognitive disability (example: head trauma)
- **Probate Conservatorship may be appointed for:**
 - Person or,
 - Person and estate, or
 - Just estate

Probate of the Person

- General powers & authority if granted “Person” (P.C. §2351)
 - Can make placement decisions (P.C. §2352)
 - Can fix the residence anywhere in CA
 - Can limit visitation of harmful individuals, if included in petition
- To make medical decisions:
 - Must request that power in petition
 - Requires a doctor’s declaration

Probate of the Estate

- General powers & authority if granted “Estate” (P.C. §2355)
 - Must marshal (take possession) all assets
 - Can sell real & personal property (P.C. §2540-2545)
 - Must purchase clothing, food, and other personal items
 - Decide what allowance the Conservatee will receive
 - Make decisions regarding managing & investing assets

Omnibus Act of 2006

- Probate Code §2920 – expanded court oversight and PG's mandates
- No funding provided
- Requires PG (Probate Cons.) to begin an investigation within two business days
- Requires court to appoint PG, if client is at risk
- Requires PG to file for Conservatorship, if imminent threat to person or estate
- Allows court to appoint PG over the PG's objections

Probate Conservatorship-Details

- Anyone can file a petition to be appointed
- Family/friends must file their own petition (cannot be appointed off the PG/PC's petition)
- In most counties the Public Defender is appointed to represent the client, if the client objects to the conservatorship
- The client is entitled to a jury or court trial
- PC/PG can obtain blanket medical consent powers (including end-of-life)
- Conservatorship does not have to be renewed
 - Court accountings required (if appointed for estate)
 - Notices of moves required

Probate Conservatorship Referral Process



- The following documents must be submitted to PG/PC:
 - Completed referral form
 - Letter from the treating physician
 - Capacity declaration
 - In most counties
 - Doctor may have to testify at trial
- Investigation time line = between 2 to 4 months in most counties
 - Court calendar backlog
 - PG/PC staffing limitations

Probate Client Typically

- Is frail and elderly
- Has numerous medical problems
- Has significant cognitive and/or physical difficulties
- Can no longer manage his/her financial affairs or make prudent day-to-day life decisions

What are Dementia Powers?

- Special powers granted to a Probate Conservator, by the court, for Conservatees with a diagnosis of dementia
- The Probate Conservator may be granted the power to authorize medications as follows:
 - Medications to treat dementia and/or
 - To affect behavior, cognition or mood
- The Probate Conservator may be granted the power to place the Conservatee as follows:
 - In a secured perimeter residential care facility
 - This is any place the client is not free to leave at will
 - A locked or secured nursing facility *specializing* in the care and treatment of people with a diagnosis of dementia
 - Locked psychiatric facilities are specifically prohibited
- Dementia Powers do not exist in an LPS Conservatorship

LPS CONSERVATORSHIP

Details of LPS Conservatorship

- LPS is an acronym for Lanterman-Petris-Short Act.
 - Legislation passed in the 1960s
 - Mandated due process commitment criteria to protect the rights of the mentally ill and
 - To force mental health treatment
- An LPS Conservatorship must be appointed of the person, and may be appointed for person and the estate

LPS Conservatorship Basic Facts

- Terminates one year from the date of appointment
 - Unless a petition for reappointment has been filed and granted
- Yearly renewals require two doctors' declarations (W&I Code Section 5361)

LPS Conservatorship Criteria

- The person is adjudicated to be gravely disabled as a result
 - A mental disorder, or impairment by chronic alcoholism (rarely used)
- Gravely disabled is:
 - The inability to provide for basic needs of food, clothing, or shelter
 - Due to a mental disorder or chronic alcoholism, and
 - The person is unwilling or incapable of accepting voluntary treatment
- LPS Conservatorship may be appointed of
 - Person or
 - Of the person and the estate
 - But never just estate

LPS Person Powers

- To order psychiatric treatment:
 - Placement in a locked psychiatric facility
 - Order psychotropic medications
- Must place in least restrictive appropriate setting
 - Note: The court often times determines what is to be the appropriate level of care

LPS Conservatorship Criteria

- Generally referrals begin w/W&I Code 5150 process
- Referrals come from designated psychiatric treatment facilities, jails and the courts
- All referrals must be sent to the PG/PC to investigate
- The PG/PC is always the temporary conservator, but family may be appointed off the PG/PC's petition
- PD is always appointed to represent the client
- The client is entitled to a jury or court trial

LPS Client Typically

- Has a DMS 5-Axis I diagnosis such as Schizophrenia or other psychotic disorder or a mood disorder with psychotic symptoms
- Has had recent, multiple admissions to acute psychiatric facilities
- Refuses to take medications or is not responding to treatment efforts
- Requires treatment in a locked psychiatric facility or a less restrictive supervised setting
- Is between the ages of 18 and 60 with an average age of 53
- Is on public benefits (Medi-cal, SSI, SSA, VA, etc.)

LPS Estate Powers

- Are the same as a Probate Cons.
 - To marshal all assets
 - To sell real & personal property
 - To purchase clothing, food, and other personal items
 - To decide what spending money the client will receive
 - To protect and invest assets

General Information

General Conservator Activities

- Investigate and determine if a Conservatorship is necessary and who should be the Conservator
- Investigate and pursue all criminal abuse and neglect
- Marshall assets
- Apply for and deal with benefit/entitlement issues
- Pay bills/deal with creditors
- Ensure services for food, clothing, and shelter is provided for the Conservatee
- Ensure proper housing and level of care
- Ensure delivery of medical care and mental health treatment/system issues
- Deal with family/relatives/friends

General Conservator Activities-Cont.

- Problem solving/informal counseling
- Access other social and human service resources
- Advocacy role on Conservatees' behalf
- Legal representation
- Estate management/planning
- Manage and sell personal/real property
- File Inventory & Appraisal with Superior Court and facilitate declarations to renew the Conservatorship when appropriate
- Report annually to Superior Court on client's status
- Prepare for and testify at trials

LPS vs Probate - Major Differences

- **Probate**

- Cognitive & physical disability
- No renewal process required
- Cannot place in a locked psy facility-only dementia unit
- Must obtain special Dementia Powers to authorize psychotropic medications
- Can obtain authority for blanket medical powers

- **LPS**

- Mental illness – grave disability is the criteria
- Must be renewed every year
- Can place in a locked psychiatric facility
- Can authorize psychotropic medication
- Does not have blanket medical authority

Conservatee's Rights

A Conservatee generally keeps the following rights, unless it has been adjudicated the Conservatee lacks the capacity to exercise these rights:

- Control personal spending of an allowance
- Receive personal mail (magazines, personal letters, cards, etc.)
- Make his or her own medical decisions
- Marry
- Make or change a will
- Control his or her own salary
- Be represented by an attorney
- Ask a judge to change Conservators
- Ask a judge to end the Conservatorship
- Vote (if they can fill out a voter's registration card)

Alternatives to Conservatorship

- By law the PG/PC is the agency of last resort
- The function of the PG/PC is to act as Conservator when alternatives to Conservatorship have been explored and no alternatives have been found
- Other Alternatives to Conservatorship include one or more of the following:
 - Representative Payee (public or private)
 - Power of Attorney
 - Supporting Agency (Regional Centers)
 - Other Conservators (Family, Private for Profit)



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THE FINISH LINE

Current Trends

- Diversion of criminal justice cases w/psychiatric issues to Conservatorship
- Legislation efforts to broaden the definition of LPS Conservatorship to address the homelessness crisis in CA
- Legislation efforts to add the lack of medical decision making ability to the criteria for LPS

Current Strains & Challenges

- Dramatic increase in forensic referrals
 - Creates placement challenges & risks
- Placements options very limited
 - Especially for Conservatees w/dementia & behavioral Issues
 - Conservatees w/criminal justice histories
- Board & Care shortage – at crisis level
- No dedicated state funding

Moving in a Positive Direction

- Current CA Dept. of Social Services training grant
 - Created ability to elevate our website, certification program and additional training opportunities for members
- Building strong collaborative partnerships
- Engaging in the legislative process to inform legislators & partners about PA/PG/PC

