**Overview of Conservatorship Types and Key Elements**

**Conceptual Framework:**

The laws governing Probate and LPS Conservatorships are a drastic event which lead to controlling a person’s life when every other option which needs to be tried has failed. The standards for applying these options are very specific legal standards which allow choice by individuals to live their lives except when the conditions of these laws are present and validated though a legal review process. In the case of conservatorships, the individual has the right to legally challenge the application of these laws at the time of initial determination or renewals.

Because the legal framework and basic premise of these laws ensures maximum choice by the individual, conservatorship provides a ‘solution safety net’ for those individuals unable to manage the basic needs of shelter, food and clothing. It is not a primary solution for individuals with serious mental health disorders who are unwilling to seek treatment. It is an option which should be pursued when the conditions established are met. Other option may be more viable for families who witness their loved one’s life deteriorating due to lack of awareness of their mental health disorder and/ or lack of treatment.

**Basic Types of Conservatorships** (and legislative authorization)**:**

1. Probate (California Probate Code Division 4)
2. LPS ( Lanterman Petris Short Conservatorship Act 1967)
   1. Standard
   2. Murphy (Forensic Cases)

**Probate:**

1. Diagnostically, disorders associated with the elderly’s aging process or head trauma are the focus when the inability to understand consequences is present. Criteria is cognitive and physical disabilities. Probate also can involve: management of assets, resistance of undue influence, and limited probate conservatorships for developmentally disabled individuals.
2. Referrals can come from any source: SNF’s, acute hospitalizations, banks, family, private attorneys, etc.
3. Petition filed after investigation completed but, the Public Guardian (PG) must begin investigation within 2 business days upon receipt of a completed referral.
4. Individuals cannot be placed in a locked facility. A secured perimeter permitted with dementia cases. The conservatee must be placed in the least restrictive appropriate placement.
5. Authorization to administer psychiatric medications for symptoms of dementia requires special dementia powers.
6. The PG can obtain authority for blanket medical powers and consent.
7. The legal standard for approval of the Probate conservatorship is “clear and convincing”.
8. There is no automatic termination process.
9. Court can order the Public Guardian to investigate.

10. The Public Guardian’s authority ends at the state lines.

**LPS:**

1. LPS Conservatorship is a tool which give the conservator the power to work with the doctor to achieve recovery treatment for a mentally ill individual to achieve a level of health where they are no longer gravely disabled. The purpose is to provide supervision, treatment and placement for persons gravely disabled. It is involuntary treatment, especially for those who have no insight into their illness and are non-compliant with treatment and medication. The patient cannot refuse medication, which is the essence of the LPS Conservatorship. The Public Conservator (PC) does not have blanket medical powers.
2. Criteria is a determination of grave disability and an underlying a serious mental health condition.
   1. Grave disability means the mentally ill person cannot take care of his/her basic needs for food, clothing, and/or shelter (see ‘frequently asked questions’ below for examples which do and do not meet the standard).
   2. Psychiatric diagnoses, might include: psychosis, schizophrenia, bi-polar disorder, schizoaffective disorder, clinical depression, obsessive compulsive disorder and chronic alcoholism. Existing diagnosis within DSM IV is preferable but not essential.
   3. Without the threshold of grave disability LPS Conservatorships are not appropriate.
   4. Serious substance use disorders are generally not considered as underlying mental health conditions within this act.
3. Murphy Conservatorships are specific for individuals who have been found mentally incompetent under Penal Code 1370 and be determined to be gravely disabled:
   1. The complaint, indictment or information pending must include a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.
   2. As a result of mental health disorder is unable to understand the nature and purpose of the proceedings and to assist in the conduct of his/her defense in a rational manner
   3. The person represents a substantial danger of physical danger of physical harm to others by reason of mental disease (includes domestic violence, stalking, violation of a protective order)
   4. The indictment cannot be dismissed.
4. Petitions to the court can only be forwarded by a qualified psychiatrist at an acute psychiatric hospital (Short-Doyle facility, VA Hospital or State Hospital) or a treating doctor at the jail. Evaluation by the treating doctor in jail may consider the individuals situation upon release.
5. The court can order the Public Guardian to investigate the merits of both a standard LPS and a Murphy petition.
6. The legal standard for approval of the LPS conservatorship is “beyond a reasonable doubt”
7. Conservatee’s can be placed in an appropriate locked facility for the purpose of treatment for behavioral health disorders.
8. A detailed flow chart of the various paths the petitions and court proceeds can follow is available for various lengths of conservatorships (go to namiscc.org web site, legal area under resources tab, download lps-civil-commitment-flow-chart).
9. The Conservatorship automatically terminates at one year, unless a renewal petition is filed. Continuation requests are evaluated on current conditions and behaviors in the context of gravely disabled and do not allow for future what ifs.

**Frequently Asked Questions:**

1. What are examples of conditions which may meet the standard of gravely disabled. Meeting any one of the three criterial can establish gravely disabled.
   1. Shelter: Individuals are unable to avail themselves of shelter which is available. They have no place to live safely. They cannot handle room and board or shelter safely. There is no place to live safely; they may not come home unless they are under LPS Conservatorship and have gone through treatment.
   2. Food: Individuals may be too disorganized to obtain food. They have lost significant weight causing a health risk or are paranoid about food.
   3. Clothing: They wear their clothes for long periods of time causing excess build-up of bacteria on their skin resulting in a health risk. Or, they take off their clothes at inappropriate items or places, or they dress inappropriate for the weather putting them at risk
2. Examples which would not meet the standard of gravely disabled:
   1. The fact that a mentally ill person lives on the streets does not mean they are gravely disabled.
   2. If a person can get food or clothing from a shelter, they are not considered gravely disabled. To prove that a person cannot provide food or clothing is extremely difficult, because if they can go to the Salvation Army or a dumpster to acquire clothes, panhandle for money, or find food kitchens then they are not considered gravely disabled.
3. Does the risk of self- harm or suicide influence the criteria for LPS Conservatorship consideration? Danger to self and others is condition for an initial 5150 acute hospitalization admission and possible subsequent 5250 and 5260 hold. The criteria is often a high bar since the danger is usually in the moment and the screening determines both intent and means. Without meeting the criteria of gravely disabled, risk of self-harm can initiate a 5260 hold but not an investigation for conservatorship.
4. Who can be the conservator? Public guardian, paid by the state; private professional conservator; the family, a relative or a friend.
5. To be conserved the individual must be a resident of the county and have tried least restrictive treatment options which were not successful and which treatment options has been documented.
6. What are the steps which lead to a LPS petition?
   1. First a person exhibiting harm to self or others, or is gravely disabled can be placed on a 72-hour hold (5150) by a qualified police officer, psychiatrist or mental health personnel.
   2. After the 72-hour hold in the hospital the treating psychiatrist may initiate a 14-day hold (5250).
   3. A 14-day hold must have a probable cause hearing within 4 working days of the hold.
   4. After the probable cause hearing the doctor may request a LPS Conservatorship investigation from the Public Guardian’s office
   5. The Public Guardian will review the application and may petition the Court for a Temporary Conservatorship (T-Con).
   6. As part of the investigation the Public Guardian will visit and evaluate the patient and make a recommendation to the court to proceed or dismiss the LPS Conservatorship case.
7. What can family members do to support the intended use of Conservatorships? Families can provide to the treating psychiatrist a focused history of: current diagnosis. hospitalizations, incarcerations, treatment compliance or lack of, and specifics which support the criterial of gravely disabled. This information should be provided at the beginning of the 5150 hold period and prior to the 5250 probable cause hearing to the treating psychiatrist and also to the Public Guardian doing the investigation.

Note: the above summary is intended to provide a brief overview of the types of conservatorships. More detailed descriptions are available on the namiscc.org web site under the legal tab in the resources heading. Due to the complexity of this area please consult experts when making decisions affecting yourself or your loved ones.