



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

| | |
|--|---|
| Title | Agenda Item Type |
| Probate Conservatorship and Guardianship: Major Neurocognitive Disorders | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385 | January 1, 2019 |
| Recommended by | Date of Report |
| Probate and Mental Health Advisory Committee | August 23, 2018 |
| Hon. John H. Sugiyama, Chair | Contact |
| | Corby Sturges, 415-865-4507 corby.sturges@jud.ca.gov |

Executive Summary

The Probate and Mental Health Advisory Committee recommends revising eight Judicial Council forms to implement recent legislation that replaced the term “dementia” with “major neurocognitive disorder” to conform to usage in the fifth and current edition of the *Diagnostic and Statistical Manual of Mental Disorders*. The committee also recommends stylistic and technical changes to several of the forms to bring them up to date.

Recommendation

The Probate and Mental Health Advisory Committee recommends revising Judicial Council forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385, effective January 1, 2019, to add references to “major neurocognitive disorder” to all existing references to “dementia” and as follows:

1. Revise form GC-310, *Petition for Appointment of Probate Conservator*, to refer in item 5f more precisely to the language of Probate Code section 1420.

2. Revise form GC-313, *Attachment Requesting Special Orders Regarding Dementia*, to delete “Dementia” from the heading of item 5 so that it reads simply “Medications” and to make technical changes to clarify the context of the form’s use.
3. Revise form GC-333, *Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA*, to simplify the caption.
4. Revise form GC-334, *Ex Parte Order Re Completion of Capacity Declaration—HIPAA*, to simplify and clarify the caption, item 2, item 9, and the clerk’s certification.
5. Revise form GC-335, *Capacity Declaration—Conservatorship*, to clarify the instructions and make technical changes.
6. Revise form GC-335A, *Dementia Attachment to Capacity Declaration—Conservatorship*, to replace “dementia” with “major neurocognitive disorder” in the caption, delete “dementia” from the heading of item 9b so that it reads “Administration of medications” and delete “psychotropic” from the phrase “psychotropic medications” throughout item 9b to conform to the language in Probate Code section 2356.5(c), simplify the description of the standard for lack of capacity to give informed consent in items 9a(4) and 9b(4), and make technical changes.
7. Revise form GC-380, *Petition for Exclusive Authority to Give Consent for Medical Treatment*, to clarify that the form is mandatory and make technical changes.
8. Revise form GC-385, *Order Authorizing Conservator to Give Consent for Medical Treatment*, to clarify the instructions, clarify that the form is mandatory, and make technical changes.

The revised forms are attached at pages 6–24.

Relevant Previous Council Action

The Judicial Council initially approved forms GC-380 and GC-385 for optional use. These forms were last revised effective January 1, 1998. Then, effective January 1, 2000, the council adopted for mandatory use all the Judicial Council forms that had previously been approved for optional use in decedents’ estates, guardianship, and conservatorship proceedings and designated each form as mandatory by using an asterisk next to each form number on the official list of forms. As forms were revised after this date, the notations on the previously optional forms were updated to reflect their adoption for mandatory use. Although forms GC-380 and GC-385 are designated as mandatory by an asterisk on the forms list, the current forms themselves still indicate, incorrectly, that they are approved for optional use because they have not been revised since 1998. As noted below, this recommendation revises these two forms to indicate that they are adopted for mandatory use.

Form GC-310 has been revised several times over its history, most recently effective January 1, 2016. The council has not revised the other forms in this recommendation in more than a decade.

Analysis/Rationale

Until 2013, earlier editions of the *Diagnostic and Statistical Manual of Mental Disorders* used the term “dementia” to refer to a syndrome characterized by “multiple cognitive deficits, which include memory impairment and at least one of the following: aphasia, apraxia, agnosia or disturbance in executive functioning. Social or occupational function is also impaired.”¹ Following the recommendations of a work group to revise the diagnostic criteria for dementia and other similar disorders, the American Psychological Association (APA) published extensive revisions in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* in 2013.²

The *DSM-5* replaced the term “dementia” with “major neurocognitive disorder (NCD)” and revised the disorder’s diagnostic criteria. The drafters intended not to eliminate the use of dementia entirely, but to recognize that the term comprised several separate diagnoses and subsume them all under the broad category of major NCDs.³ The work group proposed including the term dementia in parentheses to allow its continued use in contexts where it is the standard term.⁴

In response to the new terminology in the *DSM-5*, the Legislature and the Governor enacted Senate Bill 413 (Stats. 2017, ch. 122), which amended section 2356.5 of the Probate Code, effective January 1, 2018, to replace the term “dementia” with “major neurocognitive disorder.” The Probate and Mental Health Advisory Committee recommends revising eight Judicial Council forms, effective January 1, 2019, to implement SB 413 by adding the term “major neurocognitive disorder” to the eight forms listed above wherever they use the term “dementia.”

In a general conservatorship established under section 1830 of the Probate Code, the conservator does not hold authority to place the conservatee in a mental health treatment facility or to authorize the administration of medication to treat mental disorders against the conservatee’s will. But if the conservatee has a major neurocognitive disorder, such as dementia, section 2356.5 allows a court to grant the conservator authority (1) to place the conservatee in “a secured-perimeter residential care facility for the elderly” and (2) to authorize the administration to the conservatee of “medications appropriate for the care and treatment of major neurocognitive disorder.” (Prob. Code, § 2356.5(b) & (c).) Both orders are contingent on specific judicial findings, by clear and convincing evidence, that the conservatee has a major

¹ Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. text rev. 2000, DSM-IV-TR).

² Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013, DSM-5).

³ Mary Ganguli et al., “Classification of Neurocognitive Disorders in DSM-5: A Work in Progress” (Mar. 2011) 19(3) *Am. J. Geriatric Psychiatry* 205–210.

⁴ *Ibid.*

neurocognitive disorder, lacks the capacity to give informed consent to the proposed placement or treatment, needs or would benefit from the placement or treatment, and, with respect to placement, that a locked facility is the least restrictive placement appropriate to the needs of the conservatee. (*Ibid.*)

Several of the Judicial Council forms listed above directly implement the provisions of section 2356.5. Other forms refer to these forms or to so-called dementia powers. The recommended revisions insert “major neurocognitive disorder” in all forms where the term “dementia” occurs. In most instances, the revisions retain a reference to dementia to promote continuity between the old and the new forms.

In addition, the revisions delete the term “psychotropic” from the phrase “psychotropic medications appropriate for the care and treatment of dementia” wherever that phrase occurs. In some forms, the term has already been removed. Removing it from all the forms promotes consistency, both with other forms and with the language of Probate Code section 2356.5(c), which refers simply to “medications.” Finally, the committee recommends technical changes to the forms to update references and promote clarity and utility.

Policy implications

In addition to implementing the council policies of updating rules and forms to conform to current law and practice and promoting equal access to justice for persons with disabilities, this recommendation promotes more effective and efficient collaboration among the courts, litigants, and treatment providers by incorporating into law the diagnostic terms and criteria currently in use by clinical practitioners.

Comments

This recommendation circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April to June 8, 2018, to the standard mailing list for rules and forms proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, and other court staff and probate professionals. Two courts, one individual, and three organizations provided comment. Four commenters agreed with the proposal. Two commenters agreed and offered suggestions for further revisions. The committee incorporated most of the suggestions into its recommendation and made additional technical and clarifying changes consistent with those suggestions. A chart with the full text of the comments received and the committee’s responses is attached at pages 25–30.

Alternatives considered

The committee considered removing all references to dementia from the forms, but concluded that this removal would be premature. Replacement of a commonly used term without a trace seems calculated to lead to confusion. In addition, commentators have noted professional uncertainty about the precise scope of the term “major neurocognitive disorder.” Although agreement exists that the term includes “dementia,” the committee has not been able to identify a clear consensus regarding which other disorders might be covered or how diagnosticians may

distinguish between major NCDs and milder forms of impairment.⁵ In light of these considerations and consistent with the recommendation of the APA work group, the committee opted to insert “major neurocognitive disorder” on the forms whenever “dementia” is used and to retain a parenthetical reference to “dementia” to promote continuity.

Fiscal and Operational Impacts

Implementation will require courts that provide paper versions of these forms to incur production and copying costs. Most courts will also need to make one-time changes to document names in their case management systems. Some courts may need to update their websites, but this impact should be mitigated by the availability of the forms to all courts and litigants on the California Courts public website. Any training costs are expected to be minimal.

Attachments and Links

1. Forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC 385, at pages 6–24
2. Chart of comments, at pages 25–30
3. Link A: Senate Bill 413 (Stats. 2017, ch. 122),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB413

⁵ See Joseph R. Simpson, “DSM-5 and Neurocognitive Disorders” (2014) 42 *J. Am. Acad. Psychiatry & Law* 159, at p. 160 (dementias constitute “nearly all” of the major NCDs; the distinction between major and mild NCDs is inherently arbitrary, and the disorders exist along a continuum).

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF (name): | |
| (PROPOSED) CONSERVATEE | |
| PETITION FOR APPOINTMENT OF <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship | CASE NUMBER: HEARING DATE AND TIME: DEPT.: |

1. **Petitioner (name):**

requests that

a. (Name):
(Address):

(Telephone):

be appointed successor conservator limited conservator
of the PERSON of the (proposed) conservatee and Letters issue upon qualification.

b. (Name):
(Address):

(Telephone):

be appointed successor conservator limited conservator
of the ESTATE of the (proposed) conservatee and Letters issue upon qualification.

- c. (1) bond not be required because the proposed successor conservator is a corporate fiduciary or an exempt government agency. for the reasons stated in Attachment 1c.
- (2) bond be fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law. (Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code section 2320.)
- (3) \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location):

- d. orders authorizing independent exercise of powers under Probate Code section 2590 be granted. Granting the proposed successor conservator of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship estate. (Specify orders, powers, and reasons in Attachment 1d.)
- e. orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted. (Specify orders, facts, and reasons in Attachment 1e.)
- f. orders relating to the powers and duties of the proposed successor conservator of the person under Probate Code sections 2351–2358 be granted. (Specify orders, facts, and reasons in Attachment 1f.)
- g. the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer and that the proposed successor conservator of the person be granted the powers specified in Probate Code section 2355. (Complete item 9 on page 6.)

Do NOT use this form for a temporary conservatorship.

| | |
|-------------------------------|--------------|
| CONSERVATORSHIP OF (name): | CASE NUMBER: |
| (PROPOSED) CONSERVATEE | |

1. h. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited conservator of the person under Probate Code section 2351.5 be granted. (Specify orders, powers, and duties in Attachment 1h and complete item 1j.) successor*
- i. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited conservator of the estate under Probate Code section 1830(b) be granted. (Specify orders, powers, and duties in Attachment 1i and complete item 1j.) successor*
- j. (for limited conservatorship only) orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. (Specify limitations in Attachment 1j.)
- k. orders authorizing placement or treatment for a major neurocognitive disorder (such as dementia) as specified in the Attachment Requesting Special Orders Regarding a Major Neurocognitive Disorder (form GC-313) under Probate Code section 2356.5 be granted. A Capacity Declaration—Conservatorship (form GC-335) and Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her license with at least two years experience diagnosing major neurocognitive disorders (including dementia), are filed herewith. will be filed before the hearing.
 - (appointment of successor conservator only) will not be filed because an order relating to placement or treatment for a major neurocognitive disorder (such as dementia) was filed on (date): . That order has neither expired by its terms nor been revoked.
- l. other orders be granted. (Specify in Attachment 1l.)

2. (Proposed) conservatee is (name): (Telephone):
 (Current address):

3. a. **Jurisdictional facts** (initial appointment only) The proposed conservatee has no conservator in California and is a
 - (1) resident of California and
 - (a) a resident of this county.
 - (b) not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
 - (2) nonresident of California but
 - (a) is temporarily living in this county, or
 - (b) has property in this county, or
 - (c) commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.
- b. **Petitioner** (answer items (1) and (2) and check all other items that apply)
 - (1) is is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
 - (2) is is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
 - (3) is the proposed successor conservator.
 - (4) is the (proposed) conservatee. (If this item is **not** checked, you must also complete item 3f.)
 - (5) is the spouse of the (proposed) conservatee. (You must also complete item 6.)
 - (6) is the domestic partner or former domestic partner of the (proposed) conservatee. (You must also complete item 7.)
 - (7) is a relative of the (proposed) conservatee as (specify relationship):
 - (8) is an interested person or friend of the (proposed) conservatee.
 - (9) is a state or local public entity, officer, or employee.
 - (10) is the guardian of the proposed conservatee.
 - (11) is a bank is another entity authorized to conduct the business of a trust company.
 - (12) is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)

* See item 5b on page 4.

| | |
|-------------------------------|--------------|
| CONSERVATORSHIP OF (name): | CASE NUMBER: |
| (PROPOSED) CONSERVATEE | |

3. c. **Proposed** **successor conservator** is (check all that apply)

- (1) a nominee. (Affix nomination as Attachment 3c(1).)
- (2) the spouse of the (proposed) conservatee. (You must also complete item 6.)
- (3) the domestic partner or former domestic partner of the (proposed) conservatee. (You must also complete item 7.)
- (4) a relative of the (proposed) conservatee as (specify relationship):
- (5) a bank. another entity authorized to conduct the business of a trust company.
- (6) a nonprofit charitable corporation that meets the requirements of Probate Code section 2104.
- (7) a professional fiduciary, as defined in Business and Professions Code section 6501(f). His or her statement concerning licensure or exemption is provided in item 1 on page 1 of the attached *Professional Fiduciary Attachment*. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)
- (8) other (specify):

d. Engagement and prior relationship with petitioning professional fiduciary (complete this item if petitioner is licensed by the Professional Fiduciaries Bureau.)

- (1) Statements of who engaged petitioner, or how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family or friends, are provided in item 2 on page 2 of the attached *Professional Fiduciary Attachment*. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)
- (2) A petition for appointment of a temporary conservator is filed with this petition. That petition contains statements of who engaged petitioner, how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family and friends.

e. **Character and estimated value of the property of the estate** (complete items (1) or (2) and (3), (4), and (5)):

(1) (For appointment of successor conservator only, if complete Inventory and Appraisal filed by predecessor):
 Personal property: \$ _____, per Inventory and Appraisal filed in this proceeding on
 (specify dates of filing of all inventories and appraisals):

(2) Estimated value of personal property: \$ _____

(3) Annual gross income from

- (a) real property: \$ _____
- (b) personal property: \$ _____
- (c) pensions: \$ _____
- (d) wages: \$ _____
- (e) public assistance benefits: \$ _____
- (f) other: \$ _____

(4) **Total** of (1) or (2) and (3): \$ _____

(5) Real property: \$ _____

- (a) per Inventory and Appraisal identified in item (1).
- (b) estimated value.

f. Due diligence (complete this item if the (proposed) conservatee is not a petitioner):

- (1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).
- (2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

| | |
|--|--------------|
| CONSERVATORSHIP OF <i>(name):</i> (PROPOSED) CONSERVATEE | CASE NUMBER: |
|--|--------------|

3. g. So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee has not has been filed in another jurisdiction, including a court of a federally-recognized Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

(If you answered "has," identify the jurisdiction and state the date the case was filed):

4. **(Proposed) conservatee**

- a. is is not a patient in or on leave of absence from a state institution under the jurisdiction of the California Department of State Hospitals or the California Department of Developmental Services *(specify state institution):*

- b. is receiving or entitled to receive is neither receiving nor entitled to receive benefits from the U.S. Department of Veterans Affairs *(estimate amount of monthly benefit payable):*

- c. is is not, so far as is known to petitioner, a member of a federally recognized Indian tribe.

(If you answered "is," complete items (1)–(4)):

(1) Name of tribe:

(2) Location of tribe *(if the tribe is located in more than one state, the state that is the tribe's principal location):*

(3) The proposed conservatee does does not reside on tribal land.*

(4) So far as known to petitioner, the proposed conservatee owns does not own property on tribal land.

5. a. Proposed conservatee *(initial appointment of conservator only)*

(1) is an adult.

(2) will be an adult on the effective date of the order *(date):*

(3) is a married minor.

(4) is a minor whose marriage has been dissolved.

- b. Vacancy in office of conservator *(appointment of successor conservator only. A petition for appointment of a limited conservator after the death of a predecessor is a petition for initial appointment. (Prob. Code, § 1860.5(a)(1).)*

There is a vacancy in the office of conservator of the person estate for the reasons specified in Attachment 5b. specified below.

* "Tribal land" is land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country," as defined in 18 U.S.C. § 1151.

| | |
|--|--------------|
| CONSERVATORSHIP OF <i>(name):</i> <p style="text-align: right;">(PROPOSED) CONSERVATEE</p> | CASE NUMBER: |
|--|--------------|

5. c. **(Proposed) conservatee** requires a conservator and is

(1) unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter.
Supporting facts are specified in Attachment 5c(1) as follows:

(2) substantially unable to manage his or her financial resources or to resist fraud or undue influence.
Supporting facts are specified in Attachment 5c(2) as follows:

| | |
|--|--------------|
| CONSERVATORSHIP OF <i>(name):</i> (PROPOSED) CONSERVATEE | CASE NUMBER: |
|--|--------------|

5. d. (Proposed) conservatee voluntarily requests the appointment of a successor conservator.
(Specify facts showing good cause in Attachment 5(d).)
- e. Confidential Supplemental Information (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*
- f. **(Proposed) conservatee** does does not **have a developmental disability** as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. *(Specify the nature and degree of the alleged disability in Attachment 5f).*
6. **Petitioner or proposed** **successor conservator is the spouse of the (proposed) conservatee.**
(If this statement is true, you must answer a or b.)
- a. The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
- b. Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
- (1) a successor conservator be appointed.
- (2) the spouse be appointed as the successor conservator.
(If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)
7. **Petitioner or proposed** **successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** *(If this statement is true, you must answer a or b.)*
- a. The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
- b. Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
- (1) a successor conservator be appointed.
- (2) the domestic partner or former domestic partner be appointed as the successor conservator.
(If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)
8. **(Proposed) conservatee** *(check all that apply)*
- a. will attend the hearing AND is the petitioner is not the petitioner AND has has not nominated the proposed successor conservator.
- b. *(initial appointment of conservator only)* is able but unwilling to attend the hearing AND does does not wish to contest the establishment of a conservatorship, does does not object to the proposed conservator, AND does does not prefer that another person act as conservator.
- c. *(initial appointment of conservator only)*: is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner is filed with this petition. will be filed before the hearing.
- d. *(initial appointment of conservator only)* is not the petitioner, is out of state, and will not attend the hearing.
- e. *(appointment of successor conservator only)* will not attend the hearing.
9. **Medical treatment of (proposed) conservatee**
- a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
- b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,
 is filed with this petition. will be filed before the hearing. will not be filed for the reason stated in c.
- c. *(appointment of successor conservator only)* The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on *(date)*:
 That order has neither expired by its terms nor been revoked.
- d. (Proposed) conservatee is is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

| | |
|--------------------------------------|--------------|
| CONSERVATORSHIP OF <i>(name):</i> | CASE NUMBER: |
| (PROPOSED) CONSERVATEE | |

10. **Temporary conservatorship**

Filed with this petition is a *Petition for Appointment of Temporary Conservator* (form GC-111).

11. **(Proposed) conservatee's relatives**

The names, residence addresses, and relationships of the spouse or registered domestic partner and the second-degree relatives of the (proposed) conservatee (his or her parents, grandparents, children, grandchildren, and brothers and sisters), so far as known to petitioner, are

- a. listed below.
- b. not known, or no longer living, so the (proposed) conservatee's deemed relatives under Probate Code section 1821(b) (1)–(4) are listed below.

| | <u>Name and relationship to conservatee</u> | <u>Residence address</u> |
|------|---|--------------------------|
| (1) | | |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) | | |
| (6) | | |
| (7) | | |
| (8) | | |
| (9) | | |
| (10) | | |
| (11) | | |
| (12) | | |
| (13) | | |
| (14) | | |
| (15) | | |
| (16) | | |

Continued on Attachment 11.

| | |
|--|--------------|
| CONSERVATORSHIP OF <i>(name):</i> <div style="text-align: right;">(PROPOSED) CONSERVATEE</div> | CASE NUMBER: |
|--|--------------|

12. **Confidential conservator screening form**

Submitted with this petition is a *Confidential Conservator Screening Form* (form GC-314) completed and signed by the proposed successor conservator. *(Required for all proposed conservators except banks and trust companies.)*

13. **Court investigator**

Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

14. Number of pages attached:

Date:

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

▶

(SIGNATURE OF ATTORNEY FOR PETITIONER)

(All petitioners must also sign (Prob. Code, § 1020; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)

▶

(SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME OF PETITIONER)

▶

(SIGNATURE OF PETITIONER)

| | |
|--|--------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| CONSERVATEE | |
| ATTACHMENT REQUESTING SPECIAL ORDERS REGARDING A MAJOR NEUROCOGNITIVE DISORDER | |
| <input type="checkbox"/> Petition for Appointment of Probate Conservator (form GC-310) | |
| <input type="checkbox"/> Petition for Exclusive Authority to Give Consent for Medical Treatment (form GC-380) | |

1. Petitioner **requests** that the conservator of the person be authorized
 - a. to place the conservatee in a secured-perimeter residential care facility for the elderly operated under Health and Safety Code section 1569.698 that has a care plan that meets the requirements of California Code of Regulations, title 22, section 87705.
 - b. to authorize the administration of medications appropriate for the care and treatment of major neurocognitive disorders (including dementia).
2. The conservatee or proposed conservatee has a major neurocognitive disorder (such as dementia) as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*.
3. A medical declaration executed by a licensed physician or a licensed psychologist acting within the scope of his or her license with at least two years' experience in diagnosing and treating major neurocognitive disorders (including dementia):
 - a. has been filed.
 - b. will be filed before the hearing.
4. *Restricted placement.* The conservatee needs or would benefit from placement as requested in item 1a. The conservatee lacks capacity to give informed consent to this placement. The placement requested is the least restrictive placement appropriate to the needs of the conservatee.
5. *Medications.* The conservatee needs or would benefit from administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia). The conservatee lacks capacity to give informed consent to the administration of those medications.

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY <div style="border: 1px solid black; padding: 10px; width: 80%; margin: 0 auto;"> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">DRAFT</p> <p style="text-align: center; font-weight: bold;">NOT APPROVED BY THE JUDICIAL COUNCIL</p> </div> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): PROPOSED CONSERVATEE | CASE NUMBER: CONSERVATORSHIP PETITION HEARING DATE: |
| EX PARTE APPLICATION FOR ORDER AUTHORIZING COMPLETION OF CAPACITY DECLARATION—HIPAA* | DEPT.: TIME: |

1. Applicant (name):
has filed a petition for the appointment of a conservator for the above-named proposed conservatee. The petition is set for hearing on (date): _____ at (time): _____ in Dept.: _____ Rm.:
2. The petition requests (check all that apply):
 - a. A finding that the proposed conservatee should be excused from attending the hearing on the petition.
 - b. Exclusive authority to consent to medical treatment for the proposed conservatee.
 - c. Authority to make placement or medication decisions related to a major neurocognitive disorder (such as dementia).
 - d. Appointment of a conservator of the estate.
 - e. Other (specify): _____
3. Applicant has requested (name each declarant): _____

to complete, sign, and deliver to applicant, for use to support the petition, a
 Capacity Declaration—Conservatorship (form GC-335)
 and a Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship (form GC-335A)
 (the Declaration), concerning the medical condition or mental capacity of (name of proposed conservatee): _____

4. The proposed conservatee has not consented to the disclosure of any private medical information that would be disclosed by the completed Declaration.
5. Applicant requests this court to authorize each declarant named in item 3 to complete, sign, and deliver the Declaration to applicant within 15 days of the declarant's receipt of the court's order.
6. Applicant requests this court to dispense with notice of hearing on this application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

| | |
|---|----------------------------------|
| _____ (TYPE OR PRINT APPLICANT'S NAME) | _____ (APPLICANT'S SIGNATURE) |
|---|----------------------------------|

* The federal Health Insurance Portability and Accountability Act of 1996. Use this form with Ex Parte Order Re Completion of Capacity Declaration—HIPAA (form GC-334).

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): PROPOSED CONSERVATEE | CASE NUMBER: CONSERVATORSHIP PETITION HEARING DATE: |
| EX PARTE ORDER RE COMPLETION OF CAPACITY DECLARATION—HIPAA* | DEPT.: TIME: |

1. Attached to this order is a *Capacity Declaration—Conservatorship* (form GC-335) and a *Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship* (form GC-335A) (the Declaration).
2. (Name): having applied for an order authorizing the declarant(s) named in item 5 to complete, sign, and return the Declaration for the purpose specified in item 6, and good cause appearing:

THE COURT FINDS

3. Notice of the hearing on the application should be dispensed with and the application should be granted.
4. A petition for the appointment of a conservator has been filed in this proceeding by (name of petitioner):
 This petition is set for hearing on (date): _____ at (time): _____ in Dept. : Rm. :
5. Declarant (name each):

has been requested to complete and sign the Declaration for the purpose specified in item 6.

6. Petitioner proposes to use the Declaration to provide evidence to support (check all that apply):
 - a. A finding that the proposed conservatee should be excused from attending the hearing on the petition.
 - b. A request for exclusive authority to consent to medical treatment for the proposed conservatee.
 - c. A request for authority to make placement and medication decisions related to treatment of a major neurocognitive disorder (including dementia).
 - d. The appointment of a conservator of the estate.
 - e. Other (specify):

* The federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

| | |
|-----------------------------|--------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| PROPOSED CONSERVATEE | |

THE COURT ORDERS

- 7. Notice of hearing on the application is dispensed with.
- 8. Each declarant named below is authorized to complete, sign, and deliver to the attorney or other person whose address appears at the top of page 1 of this order the original of the Declaration, consisting of:
 - a. *Capacity Declaration—Conservatorship* (form GC-335) (name each authorized declarant):

- b. and *Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship* (form GC-335A) (name each authorized declarant):

regarding (name of proposed conservatee):

to enable the Court to determine whether the proposed conservatee should be excused from attending the hearing on the appointment of a conservator or the proposed conservator should be granted certain powers over the person or estate of the proposed conservatee.

- 9. Use of the Declaration is governed by the disclosure safeguards in the regulations of the federal Department of Health and Human Services (45 C.F.R. §§ 160 & 164) under HIPAA, and no use other than what is permitted in those regulations is permitted by this order.
- 10. The completed and signed original of the Declaration must be returned to the attorney or other person whose address appears at the top of this order within 15 days after its receipt by the declarant authorized to complete and sign it.
- 11. Other orders (specify):

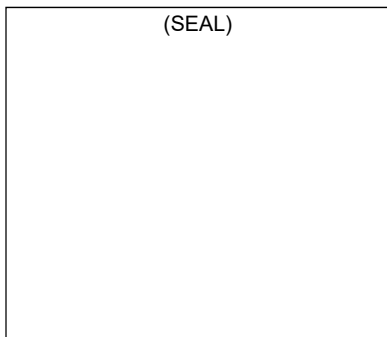
Date: _____

JUDICIAL OFFICER

CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office.

Date: _____ Clerk, by _____, Deputy



| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY DRAFT Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE | |
| CAPACITY DECLARATION—CONSERVATORSHIP | CASE NUMBER: |

TO PHYSICIAN, PSYCHOLOGIST, OR RELIGIOUS HEALING PRACTITIONER

The purpose of this form is to enable the court to determine whether the (proposed) conservatee (*check all that apply*):

A. is able to attend a court hearing to determine whether a conservator should be appointed to care for him or her. The court hearing is set for (date): . (Complete item 5, then sign and file page 1 of this form.)

B. has the capacity to give informed consent to medical treatment. (Complete items 6 through 8, sign page 3, and file pages 1 through 3 of this form.)

C. has a major neurocognitive disorder (such as dementia) and, if so, (1) whether he or she needs to be placed in a secured-perimeter residential care facility for the elderly, and (2) whether he or she needs or would benefit from medication for the treatment of major neurocognitive disorders (including dementia). (Complete items 6 and 8 of this form and complete form GC-335A; sign and attach form GC-335A. File pages 1 through 3 of this form and file form GC-335A.)

(If more than one item is checked above, sign the last applicable page of this form or, if item C is checked, form GC-335A. File page 1 through the last applicable page of this form; if item C is checked, file form GC-335A as well.)

COMPLETE ITEMS 1–4 OF THIS FORM IN EVERY CASE.

GENERAL INFORMATION

1. (Name):
2. (Office address and telephone number):
3. I am
 - a. a California-licensed physician psychologist acting within the scope of my license with at least two years' experience in diagnosing and treating major neurocognitive disorders (including dementia).
 - b. an accredited practitioner of a religion that calls for reliance on prayer alone for healing. The (proposed) conservatee is an adherent of my religion and is under my care. (Practitioner may make ONLY the determination in item 5.)
4. (Proposed) conservatee (name):
 - a. I last saw the (proposed) conservatee on (date):
 - b. The (proposed) conservatee is is NOT a patient under my continuing treatment and care.

ABILITY TO ATTEND COURT HEARING

5. A court hearing on the petition for appointment of a conservator is set for the date indicated in item A above. (Complete a. or b.)
 - a. The proposed conservatee is able to attend the court hearing.
 - b. Because of medical inability, the proposed conservatee is NOT able to attend the court hearing (*check all items below that apply*)
 - (1) on the date set (see date in box in item A above).
 - (2) for the foreseeable future.
 - (3) until (date):
 - (4) **Supporting facts** (State facts in the space below or check this box and state the facts in Attachment 5.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date:

 (TYPE OR PRINT NAME) _____
 (SIGNATURE OF DECLARANT)

| | |
|---|--------------|
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): | CASE NUMBER: |
| <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE | |

6. EVALUATION OF (PROPOSED) CONSERVATEE'S MENTAL FUNCTIONS

Note to practitioner: This form is *not* a rating scale. It is intended to assist you in recording your *impressions* of the (proposed) conservatee's mental abilities. Where appropriate, you may refer to scores on standardized rating instruments.

(Instructions for items 6A–6C): Check the appropriate designation as follows: **a** = no apparent impairment; **b** = moderate impairment; **c** = major impairment; **d** = so impaired as to be incapable of being assessed; **e** = I have no opinion.)

A. Alertness and attention

(1) Levels of arousal (lethargic, responds only to vigorous and persistent stimulation, stupor)

a b c d e

(2) Orientation (types of orientation impaired)

a b c d e Person

a b c d e Time (day, date, month, season, year)

a b c d e Place (address, town, state)

a b c d e Situation ("Why am I here?")

(3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)

a b c d e

B. Information processing. Ability to:

(1) Remember (ability to remember a question before answering; to recall names, relatives, past presidents, and events of the past 24 hours)

i. Short-term memory a b c d e

ii. Long-term memory a b c d e

iii. Immediate recall a b c d e

(2) Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

a b c d e

(3) Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)

a b c d e

(4) Understand and appreciate quantities (deficits reflected by inability to perform simple calculations)

a b c d e

(5) Reason using abstract concepts (deficits reflected by inability to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs)

a b c d e

(6) Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break complex tasks down into simple steps and carry them out)

a b c d e

(7) Reason logically

a b c d e

C. Thought disorders

(1) Severely disorganized thinking (rambling thoughts; nonsensical, incoherent, or nonlinear thinking)

a b c d e

(2) Hallucination (auditory, visual, olfactory)

a b c d e

(3) Delusions (demonstrably false belief maintained without or against reason or evidence)

a b c d e

(4) Uncontrollable or intrusive thoughts (unwanted compulsive thoughts, compulsive behavior)

a b c d e

(Continued on next page)

| | |
|---|--------------|
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE | CASE NUMBER: |
|---|--------------|

6. (continued)

D. **Ability to modulate mood and affect.** The (proposed) conservatee has does NOT have a pervasive and persistent or recurrent emotional state that appears inappropriate in degree to his or her circumstances. (If so, complete remainder of item 6D.) I have no opinion.

(Instructions for item 6D): Check the degree of impairment of each inappropriate mood state (if any) as follows: a = mildly inappropriate; b = moderately inappropriate; c = severely inappropriate.)

| | | | | | | | | | | | | | | | | | | | | |
|---------|---|--------------------------|---|--------------------------|---|--------------------------|--------------|---|--------------------------|---|--------------------------|---|--------------------------|--------------|---|--------------------------|---|--------------------------|---|--------------------------|
| Anger | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Euphoria | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Helplessness | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> |
| Anxiety | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Depression | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Apathy | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> |
| Fear | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Hopelessness | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Indifference | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> |
| Panic | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | Despair | a | <input type="checkbox"/> | b | <input type="checkbox"/> | c | <input type="checkbox"/> | | | | | | | |

E. The (proposed) conservatee's periods of impairment from the deficits indicated in items 6A–6D

(1) do NOT vary substantially in frequency, severity, or duration.

(2) do vary substantially in frequency, severity, or duration (*explain; continue on Attachment 6E if necessary*):

F. (Optional) Other information regarding my evaluation of the (proposed) conservatee's mental function (e.g., diagnosis, symptomatology, and other impressions) is stated below stated in Attachment 6F.

ABILITY TO CONSENT TO MEDICAL TREATMENT

7. Based on the information above, it is my opinion that the (proposed) conservatee

- a. has the capacity to give informed consent to any form of medical treatment. This opinion is limited to medical consent capacity.
- b. lacks the capacity to give informed consent to any form of medical treatment because he or she is **either** (1) unable to respond knowingly and intelligently regarding medical treatment **or** (2) unable to participate in a treatment decision by means of a rational thought process, **or both**. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions. This opinion is limited to medical consent capacity.

(Declarant must initial here if item 7b applies: _____.)

8. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

| | |
|---|--------------|
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE | CASE NUMBER: |
|---|--------------|

ATTACHMENT TO FORM GC-335, CAPACITY DECLARATION—CONSERVATORSHIP, ONLY FOR (PROPOSED) CONSERVATEE WITH A MAJOR NEUROCOGNITIVE DISORDER

9. It is my opinion that the (proposed) conservatee HAS does NOT have a major neurocognitive disorder (such as dementia) as defined in the current edition of *Diagnostic and Statistical Manual of Mental Disorders*.
- a. **Placement of (proposed) conservatee.** (If the (proposed) conservatee requires placement in a secured-perimeter residential care facility for the elderly, please complete items 9a(1)–9a(5).)
- (1) The (proposed) conservatee needs or would benefit from placement in a restricted and secure facility because (state reasons; continue on Attachment 9a(1) if necessary):

 - (2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9b(2) if necessary):

 - (3) The (proposed) conservatee HAS the capacity to give informed consent to this placement.
 - (4) The (proposed) conservatee does NOT have the capacity to give informed consent to this placement. The deficits in mental function assessed in item 6 of form GC-335 and described in item 9a(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to placement in a restricted and secure environment.
 - (5) A locked or secured-perimeter facility is is NOT the least restrictive environment appropriate to the needs of the (proposed) conservatee.
- b. **Administration of medications.** (If the (proposed) conservatee requires administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia), please complete items 9b(1)–9b(5).)
- (1) For the reasons stated in item 9b(5), the (proposed) conservatee needs or would benefit from the following medications appropriate to the care and treatment of major neurocognitive disorders (including dementia) (list medications; continue on Attachment 9b(1) if necessary):

 - (2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of from GC-335, include (describe; continue on Attachment 9b(2) if necessary):

 - (3) The (proposed) conservatee HAS the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia).
 - (4) The (proposed) conservatee does NOT have the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia). The deficits in mental function assessed in item 6 of form GC-335 and described in item 9b(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to the administration of medications for the care and treatment of major neurocognitive disorders (including dementia).
 - (5) The (proposed) conservatee needs or would benefit from the administration of the medications listed in item 9b(1) because (discuss reasons; continue on Attachment 9b(5) if necessary):

10. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date:

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF DECLARANT)

| | |
|---|---------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <div style="text-align: right;">CONSERVATEE</div> | |
| PETITION FOR EXCLUSIVE AUTHORITY TO GIVE CONSENT FOR MEDICAL TREATMENT | CASE NUMBER: |

1. **Petitioner (name):** _____ **requests that**
- a. the conservatee be adjudged to lack the capacity to give informed consent to medical treatment or healing by prayer.
 - b. the conservator of the person be granted the exclusive authority to give consent to medical treatment or healing by prayer that the conservator in good faith based on medical advice determines to be necessary.
 - c. the treatment be performed by a licensed medical practitioner a licensed psychologist within the scope of his or her license an accredited practitioner of a religion that relies on prayer alone for healing.
 - d. orders related to the care and treatment of a major neurocognitive disorder (such as dementia) as specified in the Attachment Requesting Special Orders Regarding a Major Neurocognitive Disorder be granted. (Attach form GC-313.)
 - e. the order dated (specify): _____ made under Probate Code section 1880
 be revoked be modified as specified in Attachment 1e be modified as follows (specify): _____

 - f. other orders be granted as specified in Attachment 1f as follows (specify): _____

 - g. Letters of Conservatorship be reissued to include a statement that conservator has the powers requested in this petition.
2. There is no form of medical treatment for which the proposed conservatee has the capacity to give informed consent.
3. Attached to this petition is a declaration executed by a licensed physician stating that the conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion. (Label as Attachment 3.)
4. Conservatee is is not an adherent of a religion that relies on prayer alone for healing as defined in Probate Code section 2355(b).

| | |
|----------------------------|--------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| CONSERVATEE | |

5. ATTENDANCE AT THE HEARING **Conservatee**

- a. will attend the hearing.
- b. is able but unwilling to attend the hearing AND does does not wish to contest this petition.
- c. is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as Attachment 5c.
- d. is not the petitioner, is out of state, and will not attend the hearing.

6. **Special notice** has has not been requested. (Specify the names and addresses of persons requesting special notice in Attachment 6.)

7. Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330) that specifies the duties to be performed before granting an order relating to medical consent .

8. The names, residence addresses, and relationships of the spouse and all relatives within the second degree of the conservatee so far as known to petitioner are listed below listed in Attachment 8.

Relationship and name

Residence address

a. Spouse:

b.

9. Number of pages attached: _____

Date:

*(Signature of all petitioners also required (Prob. Code, § 1020).)

 (SIGNATURE OF ATTORNEY*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

 (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

 (SIGNATURE OF PETITIONER)

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY <div style="border: 1px solid black; padding: 20px; margin: 10px auto; width: 80%;"> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">DRAFT</p> <p style="text-align: center; font-weight: bold;">NOT APPROVED BY THE JUDICIAL COUNCIL</p> </div> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <div style="text-align: right;">CONSERVATEE</div> | |
| ORDER AUTHORIZING CONSERVATOR TO GIVE CONSENT FOR MEDICAL TREATMENT | CASE NUMBER: |

1. The petition for authority to give consent for medical treatment came on for hearing as follows (check items c, d, and e to indicate personal presence; complete item f):
- a. Judge (name): _____
 - b. Hearing date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____
 - c. Petitioner (name): _____
 - d. Attorney for petitioner (name): _____
 - e. Attorney for conservatee (name, address, and telephone): _____
 - f. Conservatee was present unable to attend able but unwilling to attend and does not wish to contest the petition out of state

THE COURT FINDS

2. a. All notices required by law have been given.
- b. There is no form of medical treatment for which the conservatee has the capacity to give informed consent.
 - c. Conservatee is an adherent of a religion that relies on prayer alone for healing as described in Probate Code section 2355(b).
 - d. Attorney (name): _____ has been appointed by the court as legal counsel to represent the conservatee in this proceeding. The cost for representation is: \$ _____
 - e. Conservatee has a major neurocognitive disorder (such as dementia) as described in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 4.

THE COURT ORDERS

3. a. Conservatee lacks the capacity to give informed consent to any medical treatment and the conservator of the person is granted the powers specified in Probate Code section 2355.
- b. Treatment is to be given by an accredited practitioner of the conservatee's religion under Probate Code section 2355(b).
 - c. The order dated: _____ made under Probate Code section 1880 is revoked modified as stated below as stated in Attachment 3c.
 - d. For legal services rendered, conservatee conservatee's estate shall pay to (name): _____ the sum of: \$ _____ forthwith as follows (specify terms): _____
 - e. other (specify): _____
 - f. Letters of Conservatorship shall reissue and include a statement that conservator has the powers ordered.
 - g. This order shall terminate on (date): _____
4. a. The conservator of the person is granted authority to place conservatee in a secured-perimeter residential care facility as described in Probate Code section 2356.5(b).
- b. The conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of major neurocognitive disorders (including dementia) as described in Probate Code section 2356.5(c).

5. Total boxes checked in items 2-4: _____

6. Number of pages attached: _____

Date: _____

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

SPR18-31**Probate Conservatorship: Major Neurocognitive Disorder** (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|---|--|
| 1. | Patricia M. Bye Private Fiduciary and Probate Paralegal | AM | There is no mention of how the cases which are already on file and/or Letters issued under the old forms will be treated. Please address this. | The committee appreciates the comment. The committee does not intend the change in terminology to affect the validity of existing forms already on file. Orders and letters issued on existing forms will remain in full force and effect. The legislative history of SB 413 indicates the intent to update the statutory language to conform to the terminology used in the fifth edition of the <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-5)</i> without making a substantive change. To the extent that the term “major neurocognitive disorder” might comprise a broader range of disorders than the term “dementia,” effecting an expansion of the category of disorders covered by Probate Code section 2356.5, existing orders and letters granting “dementia” powers would remain within the scope of the amended statutory authority and, therefore, continue in full force and effect. |
| 2. | Orange County Bar Association Newport Beach by Nikki P. Miliband, President | A | No specific comment. | The committee appreciates the bar association’s comment. No further response is required. |
| 3. | County of Tulare Public Guardian’s Office, Visalia by Francesca Barela, Deputy Public Guardian | A | I think it is important that we continue to stay up to date with terminology and I agree with the proposed changes. | The committee appreciates the comment. No further response is required. |
| 4. | Executive Committee, Trusts & Estates Section (TEXCOM), California Lawyers Association by Chris Carico, Attorney at Law El Segundo & Saul Bercovitch, Director of | AM | TEXCOM generally supports the proposed changes to the Judicial Council Forms for Conservatorships and Guardianships that would generally replace the term “dementia” with the term “major neurocognitive disorder (dementia)” but with a slight change to reflect | The committee appreciates TEXCOM’s comment. The committee agrees with the suggestion and has modified its recommendation to insert “including” or “such as” into the text of the forms. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-31**Probate Conservatorship: Major Neurocognitive Disorder** (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|--|---------------------------------------|-----------------|--|--|
| | Governmental Affairs San Francisco | | <p>the fact that not all major neurocognitive disorders are technically dementia. With this in mind, TEXCOM believes the proposed language to be inserted in the place of the word dementia in the Judicial Council forms should be modified to add the word “including” so that it instead reads:</p> <p>“major neurocognitive disorder (including dementia).”</p> <p>TEXCOM also supports the change in terminology in those same forms deleting the term “psychotropic” as used in the phrase “psychotropic medications appropriate to the care of dementia” and changing the phrase to “medications appropriate to the care and treatment of major neurocognitive disorder (dementia).” However, for the same reason discussed above, we recommend the addition of the word “including” so that the phrase reads:</p> <p>“medications appropriate to the care and treatment of major neurocognitive disorder (including dementia).”</p> <p>The authors of DSM-5 and affiliated working groups found that while the underlying diseases previously described as “dementia” are subsumed under “Major Neurocognitive Disorder,” the new term MNCD has an intentionally broader application as well. They specifically noted that the term included</p> | <p>The committee agrees with the suggestion and has modified its recommendation to insert “including” or “such as” to qualify “dementia” when appropriate.</p> |

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|--|--------------------|-----------------|--|---------------------------|
| | | | <p>younger individuals with “dementia-like” symptoms secondary to traumatic brain injury and various disease processes such as AIDS. “Although dementia is the customary term for disorders like the degenerative dementias that usually affect older adults, the term neurocognitive disorder is widely used and often preferred for conditions affecting younger individuals, such as impairment secondary to traumatic brain injury or HIV infection.” (See Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) at page 591, also citing the work of The Neurocognitive Disorders Work Group of the American Psychiatric Association’s DSM-5 Task Force.</p> <p>These individuals have been previously described as having “Major Neurocognitive Disorder” but not “dementia.” Accordingly, while no one with what has in the past been diagnosed as “dementia” would be excluded from this change in definition, there is a greater inclusion of individuals that had forms of Major Neurocognitive Disorder not traditionally defined as dementia. The DSM-5 authors were clear that the focus in bringing these together under MNCD was due to the common cluster of cognitive impairment symptoms.</p> <p>The Legislature was made aware of this, and presumably intended in revising Probate Code section 2356.5 to provide conservators with expanded options in placement and</p> | |

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|---|---|
| | | | administration of psychotropic medications to deal with the confusion, agitation, and problematic behavior of those with significant cognitive impairment, whether due to Alzheimer’s or Traumatic Brain Injury. | |
| 5. | Superior Court of Los Angeles County (no name provided) | A | <p>LASC is concerned that the use of the term “major neurocognitive disorder” might imply that any diagnosed condition is severe. While it may be outside of the purview of this input regarding the current proposal, and recognizing that the DMS-5 now uses the term “major neurocognitive disorder,” the concern is that the currently-used term “dementia” is almost always qualified by words such as “mild” or “moderate” or “severe.” The DMS-5, as modified, provides for those same modifiers, but there is concern that an allegation or diagnosis such as “mild major neurocognitive disorder” will be misleading as always meaning a severe level, or at least will be confusing.</p> <p>Other than the concerns set forth above, these proposed changes appear to be well thought-out and executed in the form language and LASC supports the changes.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> It is not apparent that LASC would enjoy a cost savings caused by the proposed changes.</p> <p><i>What would the implementation requirements be for courts?</i></p> | <p>The committee understands that the <i>DSM-5</i> divides neurocognitive disorders (NCDs) into three classes: delirium, mild NCDs, and major NCDs. It divides <i>major</i> NCDs further into three subclasses: “mild major,” “moderate major,” and “severe major” NCDs. The committee agrees that the two overlapping uses of “mild” in the <i>DSM-5</i> are confusing, but nevertheless believes it sufficiently clear that the Legislature intended section 2356.5 to apply to all major NCDs, without regard to subclass, and only to <i>major</i> NCDs. For example, section 2356.5 could, if circumstances warranted, authorize the secure placement or involuntary medication of a conservatee with a “mild major NCD.” But the statute does not, in any circumstances, authorize the secure placement or involuntary medication of a conservatee with only a “mild NCD.” The committee intends “major NCD” in the forms to apply to the same range of NCDs as does the statute.</p> <p>No further response is required.</p> |

SPR18-31**Probate Conservatorship: Major Neurocognitive Disorder** (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|---|
| | | | <p>Implementation of these proposed changes might cause minimal one-time changes to the document names in the court case system, though any significant retraining or systematic changes caused by these changes is not anticipated.</p> <p><i>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> A two month approval period by the Judicial Council for the proposed changes would appear to be sufficient for LASC, especially since LASC and other courts usually allow a transition time during which expired Judicial Council forms are accepted. It may take beyond this time period, however, for Guide & File and other automated document programs to be modified by other agencies.</p> <p><i>How well would this proposal work in courts of different sizes?</i> The changes will work well in a large court such as LASC.</p> | <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> |
| 6. | Superior Court of San Diego County by Mike Roddy, Executive Officer | A | <p><i>Q: Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Q: Should the term “psychotropic” be removed from references to “medications appropriate for the care and treatment of major neurocognitive disorder” on form GC-335A to make these references consistent with section</i></p> | <p>The committee appreciates the court’s comment.</p> <p>No further response is required.</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-31

Probate Conservatorship: Major Neurocognitive Disorder (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385)

All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|---|
| | | | <p><i>2356.5(c) and current usage on other forms?</i> Yes. This is consistent with the language in the Probate Code.</p> <p><i>Q: Would the proposal provide cost savings?</i> No.</p> <p><i>Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Updates to the filing document names in the case management system would be needed. Additionally, our court would need to update packets and stock of any printed forms. Our court may also need to update information on the website. Training would be minimal.</p> <p><i>Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p> <p><i>Q: How well would this proposal work in courts of different sizes?</i> This proposal should work fine in courts of all sizes.</p> | <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> |