

## Memorandum 83-26

Subject: Study L-628 - Testamentary Capacity of Conservatee

The Guardianship-Conservatorship Law provides that the appointment of a conservator does not affect the capacity of the conservatee to make a will. This memorandum is concerned with whether there should be any change in this rule.

The Guardianship-Conservatorship Law was enacted upon recommendation of the Commission. The Commission recommended continuing the rule of the prior law that the appointment of a conservator is not of itself an adjudication that the conservatee is legally incompetent to bind or obligate the conservatorship estate and that, unless the court specifically makes such an adjudication, the conservatee retains the capacity to make contracts, subject to disaffirmance by the conservator if the contract is not such as a reasonably prudent person might make and is not for necessities. The Commission also recommended a flexible system for the court by order to broaden or limit the limited legal capacity that the conservatee otherwise would have.

The Legislature was persuaded that a general rule preserving limited legal capacity for the conservatee would cause problems for the conservator in managing the conservatorship estate. Accordingly, as enacted, the law provides that, unless the court orders otherwise, appointment of a conservator of the estate renders the conservatee incompetent to bind or obligate the conservatorship estate except for the reasonable value of necessities. The court is given broad discretion, however, to make an order, either at the time of appointment or subsequently, giving the conservatee the right to enter into specified transactions or types of transactions.

Consistent with the Commission's original recommendation, the recommended legislation also provided that the appointment of a conservator did not deprive the conservatee of the capacity to make a will. This portion of the recommended legislation was enacted without change. Whether the conservatee could make or revoke a will is determined under the general provisions of the Probate Code relating to the capacity to make or revoke a will.

Attached as Exhibit 1 is a letter from Lou Aronian (the Public Administrator/Public Guardian for the City and County of San Francisco). The letter indicates the question of validity invariably arises when a will is made by a person who is under conservatorship. Mr. Aronian is particularly concerned about the likelihood of undue influence in cases where a conservatorship has been established to protect a conservatee. There is no procedure now provided for a court determination at the time the conservatee proposes to make or revoke a will of the capacity of the conservatee to do so. Mr. Aronian believes that a will or revocation of a will (including a codicil) should be valid only if the court has made a prior determination that the conservatee had the capacity to make or revoke the will.

The conservatorship statute includes a special article that provides a procedure for determining whether the conservatee has the capacity to give informed consent for medical treatment. This procedure (Sections 1880-1898 of the Probate Code) is set out in Exhibit 2 attached. Under the procedure, a petition for an order adjudging that the conservatee lacks capacity to give informed consent for medical treatment may be included in the petition for appointment of the conservator or may be made subsequently upon a petition for the order. The article includes provisions governing petition, notice, attendance of conservatee at the hearing, report by the court investigator, information by the court to the conservatee at the hearing, court order, and modification or termination of the order. The procedure provided is an excellent one to apply to the problem of determining whether the conservatee has the capacity to make or revoke a will. Moreover, it is very easy to make the procedure apply; only an amendment to add a subdivision to Section 1880 is necessary.

The staff recommends that the procedure for obtaining an order that the conservatee lacks capacity to give informed medical consent be expanded to include obtaining an order that the conservatee lacks capacity to make or revoke a will. This recommendation would be effectuated by the statutory provisions attached as Exhibit 3 to this memorandum.

If the Commission wishes to deal with this problem at this time, we could add the necessary provisions as an amendment to Assembly Bill No. 27 relating to notice in limited conservatorship cases. In this connec-

tion, the Speaker's office has asked that we review this matter but has not urged any solution to the problem.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

## CITY AND COUNTY OF SAN FRANCISCO

February 24, 1983

PUBLIC ADMINISTRATOR  
PUBLIC GUARDIAN  
1212 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94102  
TELEPHONE 558-4161

IN REPLY REFER  
TO OUR FILE NO.

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, D-2  
Palo Alto, CA 94306

Attention: Mr. John Demouilly  
Executive Secretary

Re: Proposed Legislation - Examination of  
Testamentary Capacity of Conservatee.

Dear Mr. Demouilly:

As I discussed with you earlier our Public Administrator, James R. Scannell, has asked me to assist in initiating legislation for court examination of a conservatee as to testamentary capacity in executing a witnessed will, codicil or revocation of a will.

At our request the San Francisco Board of Supervisors, by appropriate Resolution, has memorialized the California State legislature to introduce and adopt legislation as hereinafter set forth.

Question invariably arises as to the validity of a will made by persons who are under a conservatorship. Under conservatorship law, there is no adjudication as to a person being mentally incompetent which of course adds to the problem.

As the law is today, it is not necessary for an attorney who draws a will to notify the conservator of the conservatee-testator that he is about to make a will.

The only test the courts have is a matter of evidence as to whether or not the conservatee-testator had the testamentary capacity normally required to execute a will.

A conservatee should be protected from designing individuals and also should be protected from having an otherwise valid will thrown into litigation merely because he or she is under a conservatorship.

Legislation should be proposed for this long neglected

February 24, 1983

Page Two:

CALIF. LAW REVISION COMM.  
4000 Middlefield Road, D-2  
Palo Alto, CA 94306

Att'n: Mr. John Demouilly  
Executive Secretary

Re: Proposed Legislation - Examination  
of Testamentary Capacity of Conservatee.

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problem to provide for judicial review.

Granted, there is a general reluctance in conservatorship law today to impose upon a person's right to make a will, but a conservatee is already under the control of the court and there should be a stronger policy to give protection where needed.

Mr. Scannell, as you know, is also Public Guardian, and presently he has under conservatorship over 300 cases. We are sensitive to the typical problem of conservatees who are elderly and/or without understanding who are made to sign a will by the housekeeper, neighbor or an attendant.

It is therefore proposed that conservator or the conservatee petition the court for authority to execute a will by the conservatee. At that time the court could satisfy itself as to the testamentary capacity of the conservatee by examination into whether or not conservatee is able to form a plan of disposition; if he understands the extent and nature of his estate; and, if he can identify his next of kin.

Such a statute may be codified subsequent to Section 22 of the Probate Code as new Section 22.2, which subject matter is relative to a will made by menace, duress or undue influence.

Division 4 of the Probate Code contains the basic conservatorship law wherein Section 1871, sub-division (c), refers back to Chapter 1 (commencing with Section 20) of Division 1, as to conservatee's right to make a will.

Proposed new Section 22.2 of the Probate Code would read as follows:

22.2. The execution of a witnessed will, codicil or revocation of a will by a conservatee is valid provided that the court has prior to execution examined the testamentary capacity of conservatee upon petition by conservator, conservatee, the spouse or next of kin of conservatee for authority to execute testamentary document.

February 24, 1983

Page Three:

CALIF. LAW REVISION COMM.  
4000 Middlefield Road, D-2  
Palo Alto, CA 94306

Att'n: Mr. John Demouilly  
Executive Secretary

Re: Proposed Legislation - Examination  
of Testamentary Capacity of Conservatee.

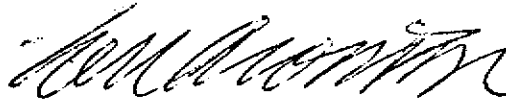
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Since time to propose new bills in the Legislature has passed, it is hoped that the Commission can appreciate the urgency of this proposal to attach it to one of the bills already proposed by the Commission.

If you need further information, please call me.

Thank you for your help.

Very truly yours,



LOU ARONIAN, Attorney  
For JAMES R. SCANNELL  
Public Administrator/  
Public Guardian

LA:lb

cc: Hon. Willie Brown  
Speaker of the Assembly  
Att'n: Mr. Dotson Wilson  
Assistant to the Speaker  
540 Van Ness Avenue  
San Francisco, CA 94102

Mr. Reuben Lopez  
Chief Consultant  
Assembly Judiciary Commission  
Sacramento Office  
Capitol Building  
Room No. 126  
Sacramento, CA 95814

EXHIBIT 2

Probate Code §§ 1880-1898

ARTICLE 2. CAPACITY TO GIVE INFORMED  
CONSENT FOR MEDICAL TREATMENT

Sec.

- 1880. Determination by court; order.
- 1890. Order; inclusion in order of appointment; limited conservatee.
- 1891. Petition for order; modification or revocation; contents.
- 1892. Notice of hearing.
- 1893. Attendance of conservatee at hearing.
- 1894. Court investigator; duties; report.
- 1895. Hearing, appearances; information to conservatee.
- 1896. Order; termination.
- 1897. Duration of order.
- 1898. Modification or revocation of order.

Cross References

Legal and civil rights of persons involuntarily detained under Lanterman-Petris-Short Act, see Welfare and Institutions Code § 5325 et seq.

§ 1880. Determination by court; order

If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this section, the letters of conservatorship shall include a statement that the conservator has the powers specified in Section 2355.

(Added by Stats.1979, c. 726, § 3.)

Cross References

Court ordered medical treatment, see § 2357.  
Duration of order, see § 1897.  
Letters of conservatorship, see § 2310 et seq.  
Modification or revocation of order, see § 1898.  
Petition for order, modification or revocation of order, see § 1891.  
Termination of order, see § 1896.

**OFFICIAL FORMS**

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (NAME): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (NAME): <p align="right">Conservatee</p>		
<b>PETITION FOR AUTHORITY TO GIVE CONSENT FOR MEDICAL TREATMENT</b>		CASE NUMBER:

1. Petitioner (name): \_\_\_\_\_ requests that
- a. the conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer.
  - b. the conservator of the person be granted the exclusive authority to give consent for 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  an accredited practitioner of a religion that relies on prayer alone for healing.
  - d.  the order dated: \_\_\_\_\_ made under section 1880 of the Probate Code be  revoked  
 modified as follows:
  - e.  other (specify): \_\_\_\_\_
  - f. 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. Conservatee  is  is not an adherent of a religion that relies on prayer alone for healing as defined in section 2355(b) of the Probate Code.

(Continued on reverse)

Form Approved by the  
 Judicial Council of California  
 Effective January 1, 1981  
 OC-380(81)

**PETITION FOR AUTHORITY TO GIVE  
 CONSENT FOR MEDICAL TREATMENT**

[02844]



CONSERVATORSHIP OF (NAME):	CASE NUMBER:
Conservatee	

**PETITION FOR AUTHORITY TO GIVE CONSENT FOR MEDICAL TREATMENT** Page 2

4. The conservatee
- a.  will attend the hearing.
  - b.  is able but unwilling to attend the hearing and 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 4c.
  - d.  is not the petitioner, is out of state, and will not attend the hearing.
5. Special notice  has not been requested  has been requested. Specify the names and addresses of persons requesting special notice in attachment 5.
6.  Filed with this petition is a proposed Order Appointing Court Investigator which specifies duties to be performed prior to granting an order relating to medical consent (see Judicial Council form GC-330).
7. 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 7.

RELATIONSHIP AND NAME	RESIDENCE ADDRESS
a. Spouse:	
b.	

8.  Number of pages attached:  
 Dated: \_\_\_\_\_ (Signature of petitioner)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on (date): \_\_\_\_\_ at (place): \_\_\_\_\_

\_\_\_\_\_  
 (Type or print name) (Signature of petitioner) [CS-46]

**OFFICIAL FORMS**

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)	TELEPHONE NO.	FOR COURT USE ONLY
ATTORNEY FOR (NAME): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (NAME):		
Conservatee		CASE NUMBER:
<b>ORDER AUTHORIZING CONSERVATOR TO GIVE CONSENT FOR MEDICAL TREATMENT</b>		

1. The petition for authority to give consent for medical treatment came on for hearing as follows (check boxes c, d, e, and f to indicate personal presence):
  - 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.
2. THE COURT FINDS
  - 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 defined in section 2355(b) of the Probate Code.
  - d.  Attorney (name): \_\_\_\_\_ has been appointed by the court as legal counsel to represent the conservatee in this proceeding. The cost for representation is \$ \_\_\_\_\_
3. THE COURT ORDERS
  - a.  Conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the person is granted the powers specified in section 2355 of the Probate Code.
  - b.  The treatment shall be performed by an accredited practitioner of the religion defined in section 2355(b) of the Probate Code.
  - c.  The order dated: \_\_\_\_\_ made under section 1880 of the Probate Code is  revoked  modified as  stated below  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. Total boxes checked in item 3: \_\_\_\_\_
5.  Number of pages attached: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Judge of the Superior Court  
 Signature follows last attachment

Form Approved by the  
Judicial Council of California  
Effective January 1, 1981  
GC-365(61)

**ORDER AUTHORIZING CONSERVATOR TO GIVE  
CONSENT FOR MEDICAL TREATMENT**

JC2848

**§ 1890. Order; inclusion in order of appointment; limited conservatee**

(a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(Added by Stats.1979, c. 726, § 3. Amended by Stats.1980, c. 1304, § 21.)

**Cross References**

No right to jury trial, see § 1452.

**§ 1891. Petition for order; modification or revocation; contents**

(a) A petition may be filed under this article requesting that the court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

- (1) The conservator.
- (2) The conservatee.

(3) The spouse or any relative or friend of the conservatee.

(c) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the conservatee within the second degree.

(Added by Stats.1979, c. 726, § 3.)

**Official Forms**

*Declaration of medical or accredited practitioner, see Form set out following § 1825.*

*Petition and order authorizing conservator to give consent for medical treatment, see Forms set out following § 1880.*

**Cross References**

Verification of petition, see § 1450.

**§ 1892. Notice of hearing**

Notice of the hearing on the petition shall be as follows:

(a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the spouse and relatives of the conservatee named in the petition (other than the petitioner or persons joining in the petition) at their addresses stated in the petition.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.

(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.

(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

(Added by Stats.1979, c. 726, § 3.)

**Official Forms**

*Notice of hearing, guardianship or conservatorship, see Form set out following § 1464.*

*Order prescribing notice, see Form set out following § 1200.*

**Cross References**

Additional notice, see § 1462.

Clerk sets petition for hearing, see § 1451.

Continued or postponed hearing, notice, see § 1463.

Form of notice, see § 1464.

Mailing

Completion, see §§ 1465, 1467.

Manner of, see § 1465.

Personal delivery in lieu of, see § 1466.

Proof of giving of notice, see § 1468.

Shortening time of notice, see § 1462.

Time for notice, extension, see § 1462.

**§ 1893. Attendance of conservatee at hearing**

The conservatee shall be produced at the hearing except in the following cases:

(a) Where the conservatee is out of state when served and is not the petitioner.

(b) Where the conservatee is unable to attend the hearing by reason of medical inability established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(c) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing. (Added by Stats.1979, c. 726, § 3.)

#### Cross References

Affidavits, see Code of Civil Procedure §§ 2008, 2009 et seq.  
Court investigator, see §§ 1419, 1454.  
Information given to conservatee prior to granting petition, see § 1895.

#### § 1894. Court investigator; duties; report

If the petition alleges that the conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the conservatee to attend the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the contents of the petition, of the nature, purpose, and effect of the proceeding, and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.

(c) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.

(d) Determine whether the conservatee wishes to contest the petition.

(e) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not,

the name of an attorney the conservatee wishes to retain.

(f) If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.

(g) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.

(h) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

(Added by Stats.1979, c. 726, § 3.)

#### Official Forms

*Order appointing court investigator, see Form set out following § 1454.*

#### Cross References

Court investigator, see §§ 1419, 1454.

#### § 1895. Hearing, appearances; information to conservatee

(a) The conservatee, the spouse or any relative or friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to

determine the conservatee's opinion concerning the order requested in the petition.

(Added by Stats.1979, c. 726, § 3.)

**Cross References**

Appointment of counsel, see § 1470 et seq.  
Interested person, see § 1424.

**§ 1896. Order; termination**

(a) If the court determines that the order requested in the petition is proper, the court shall make the order.

(b) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(Added by Stats.1979, c. 726, § 3.)

**Official Forms**

*Petition and order authorizing conservator to give consent for medical treatment, see Forms set out following § 1880.*

**§ 1897. Duration of order**

An order of the court under Section 1880 continues in effect until the earliest of the following times:

- (1) The time specified in the order, if any.
- (2) The time the order is modified or revoked.
- (3) The time the conservatorship is terminated.

(Added by Stats.1979, c. 726, § 3.)

**Cross References**

Modification or revocation of order, see § 1898.  
Termination of conservatorship, see § 1880 et seq.

**§ 1898. Modification or revocation of order**

An order of the court under Section 1880 may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided in this article.

(Added by Stats.1979, c. 726, § 3.)

Mag. Card Corrected

EXHIBIT 3

AMENDMENTS TO ASSEMBLY BILL NO. 27

Amendment 1

In line 1 of the title of the printed bill, strike out "Section 1827.5 of" and insert: Sections 1827.5, 1871, 1880, and 3012 of, and to amend the heading of Article 2 (commencing with Section 1880) of Chapter 4 of Part 3 of Division 4 of,

Amendment 2

On page 2 of the printed bill, after line 23, insert:

SEC. 2. Section 1871 of the Probate Code is amended to read:

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make <sup>or revoke</sup> a will, subject to the limitations, including a codicil of Chapter 4 (commencing with Section 20) of Division 4.

(d) The right to enter into transactions to the extent reasonable to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee.

SEC. 3. The heading for Article 2 (commencing with Section 1880) of Chapter 4 of Part 3 of Division 4 of the Probate Code is amended to read:

Article 2. Capacity to Give Informed Consent for Medical Treatment or to Make or Revoke a Will

SEC. 4. Section 1880 of the Probate Code is amended to read:

1880. (a) If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this section subdivision, the letters

of conservatorship shall include a statement that the conservator has the powers specified in Section 2355.

(b) If the court determines that the conservatee lacks the capacity to make or revoke a will, the court shall make an order adjudging that the conservatee lacks capacity to make or revoke a will, including a codicil to a will.

SEC. 5. Section 3012 of the Probate Code is amended to read:

3012. (a) Unless the spouse lacks legal capacity under the applicable standard prescribed in subdivision (b), a spouse has legal capacity to:

(1) Manage and control community property, including legal capacity to dispose of community property.

(2) Join in or consent to a transaction involving community property.

(b) A spouse lacks legal capacity to:

(1) Manage and control, including legal capacity to dispose of, community property if the spouse is substantially unable to manage or control the community property.

(2) Join in or consent to a transaction involving community property if the spouse does not have legal capacity for the particular transaction measured by principles of law otherwise applicable to the particular transaction.

(3) Do any act, or engage in any activity, described in paragraph (1) or (2) if the spouse has a conservator.

(c) Nothing in this section shall be construed to deny a spouse, whether or not lacking legal capacity, any of the following:

(1) The right to control an allowance provided under Section 2421.

(2) The right to control wages or salary to the extent provided in Section 2601.

(3) The right to make or revoke a will, including a codicil subject to the limitations of Chapter 4 (commencing with Section 20) of Division 4. Whether the spouse has capacity to make or revoke a will (including a codicil) is governed by the law otherwise applicable.

(4) The right to enter into transactions to the extent reasonable to provide the necessities of life to the spouse, the other spouse, and the minor children of the spouses.

## EXHIBIT 3

## AMENDMENTS TO ASSEMBLY BILL NO. 27

## Amendment 1

In line 1 of the title of the printed bill, strike out "Section 1827.5 of" and insert:  
 Sections 1827.5, 1871, 1880, and 3012 of, and to amend the heading of Article 2 (commencing with Section 1880) of Chapter 4 of Part 3 of Division 4 of,

## Amendment 2

On page 2 of the printed bill, after line 23, insert:

SEC. 2. Section 1871 of the Probate Code is amended to read:

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make a will ~~subject to the limitations of Chapter 4 (commencing with Section 20) of Division 4.~~

(d) The right to enter into transactions to the extent reasonable to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee.

SEC. 3. The heading for Article 2 (commencing with Section 1880) of Chapter 4 of Part 3 of Division 4 of the Probate Code is amended to read:

Article 2. Capacity to Give Informed Consent  
 for Medical Treatment or to Make or Revoke a Will

SEC. 4. Section 1880 of the Probate Code is amended to read:

1880. (a) If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this ~~section~~ subdivision, the letters



of conservatorship shall include a statement that the conservator has the powers specified in Section 2355.

(b) If the court determines that the conservatee lacks the capacity to make or revoke a will, the court shall make an order adjudging that the conservatee lacks capacity to make or revoke a will, including a codicil to a will.

SEC. 5. Section 3012 of the Probate Code is amended to read:

3012. (a) Unless the spouse lacks legal capacity under the applicable standard prescribed in subdivision (b), a spouse has legal capacity to:

(1) Manage and control community property, including legal capacity to dispose of community property.

(2) Join in or consent to a transaction involving community property.

(b) A spouse lacks legal capacity to:

(1) Manage and control, including legal capacity to dispose of, community property if the spouse is substantially unable to manage or control the community property.

(2) Join in or consent to a transaction involving community property if the spouse does not have legal capacity for the particular transaction measured by principles of law otherwise applicable to the particular transaction.

(3) Do any act, or engage in any activity, described in paragraph (1) or (2) if the spouse has a conservator.

(c) Nothing in this section shall be construed to deny a spouse, whether or not lacking legal capacity, any of the following:

(1) The right to control an allowance provided under Section 2421.

(2) The right to control wages or salary to the extent provided in Section 2601.

(3) The right to make or revoke a will, including a codicil subject to the limitations of Chapter 4 (commencing with Section 20) of Division 4. Whether the spouse has capacity to make or revoke a will (including a codicil) is governed by the law otherwise applicable.

(4) The right to enter into transactions to the extent reasonable to provide the necessities of life to the spouse, the other spouse, and the minor children of the spouses.