

**CHAPTER 3
AUTHORIZATION FOR
CONSERVATOR TO CONSENT
TO MEDICAL/SURGICAL
TREATMENT FOR CONSERVATEE**

Rule 8.3.1

Authority For Conservator

A. General Authority – Routine Treatment. Pursuant to Welfare and Institutions Code section 5358, subdivision (b), the court may authorize the conservator to consent to any treatment for the conservatee which the treating physician recommends as being "routine medical treatment." With this general authority, the conservator has the right to consent to, and thus require the conservatee to receive, the recommended, routine treatment.

B. Specific Authority - Routine Treatment. If the conservator does not have general authority pursuant to Welfare and Institutions Code section 5358, subdivision (b), and the treating physician has recommended a routine treatment to which the conservatee has not consented, then, to obtain authority to consent to conservatee receiving the recommended, routine treatment, the conservator must file a petition.

C. Specific Authority - Non-Routine Treatment. In all cases, when the treating physician is recommending treatment that is more invasive or intrusive than "routine medical treatment," such as surgery or amputation or a procedure that poses a substantial risk to the life of the conservatee, and the conservatee has not consented to the treatment, then, to obtain authority to consent to conservatee receiving the recommended, non-routine treatment, the conservator must file a petition.

D. Specific Authority – Questioned Treatment. In discharging the duty to protect the welfare of the conservatee, the conservator may file a petition to obtain authorization to consent to a recommended medical treatment when:

1. The conservatee, relatives, or other persons the conservator has previously identified expressed opposition to the proposed procedure; or
2. The conservator has substantial questions as to whether the procedure should be performed.

(Adopted 7/1/2006)

Rule 8.3.2

Obtaining Authority For Medical Treatment

A. Petition. Authorization for the conservator to consent to specific medical/surgical treatment must be sought by the conservator filing a petition. The Petition must be accompanied by

1. A written statement signed under penalty of perjury by the treating physician which identifies the recommended treatment and the basis for the recommendation; or
2. A form which includes the information as referenced in Probate Code section 2357.

B. Submission of Petition Ex Parte. Where the conservator already possesses general authority to consent to routine, medical treatment, the petition may be submitted ex parte to the court under the following circumstances:

1. The conservator, in good faith, based on medical advice, determines that the proposed procedure is required;
2. The conservatee personally or through counsel, has expressly (a) waived a hearing and (b) declared non-opposition to the proposed procedure; and
3. Relatives, friends or other persons the conservator has previously identified have expressly supported the proposed procedure.

C. Submission of Petition. Except as provided herein, the petition must be filed with that clerk at the Mental Health Desk who will calendar the motion. The conservator must provide notice to the conservatee.

(Adopted 7/1/2006)

Rule 8.3.3

Hearing on Petition

The court may convene the hearing at the facility providing treatment and care of the conservatee when the conservator or conservatee provide evidence to the court that:

- A.** Transporting the conservatee to court would (1) be physically injurious for the conservatee; or (2) create a substantial threat of harm to the conservatee or others; or

B. It would be in the best interests of the conservatee to have the hearing conducted at the facility providing the treatment and not at the courthouse.

(Adopted 7/1/2006)

Rule 8.3.4**Notice**

As referenced in Welfare and Institutions Code section 5358.2, notice to the conservatee means verbal notice.

(Adopted 7/1/2006)

Rule 8.3.5**Transportation**

The conservator is be responsible for all necessary notice and arrangements for court hearings, and must coordinate transportation of the conservatee to said hearings.

(Adopted 7/1/2006)

Rule 8.3.6**Emergency Treatment**

Nothing in these rules in any way impedes or affects other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law.

(Adopted 7/1/2006)