

# Conservatees Are Legally Entitled to Better Therapy Options

By Thomas F. Coleman  
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More than 43,000 adults with intellectual and developmental disabilities are living under the protection of California courts. Judges have adjudicated them as unable to care for their own basic needs and therefore have appointed conservators to take charge of their lives. About 5,000 new probate conservatorship proceedings are initiated each year in the state.

Statistics on the prevalence of abuse of people with disabilities indicate that a high percent of such adults – perhaps a majority – have been victims of emotional, physical, or sexual abuse. Many have experienced such abuse during their childhood years.

Studies show that adverse childhood experiences can have lifetime consequences. The after-effects of such childhood trauma can result in harmful medical conditions as well as serious mental illnesses. This may manifest as chronic anxiety, aggression, PTSD, or depression.

Other studies indicate that people with intellectual and developmental disabilities experience a higher rate of mental illness than the general population.

Parents, relatives, and service providers may witness individuals with developmental disabilities engaging in troubling behaviors – actions that make life difficult for the individuals and those around them. They often seek professional help to change these behaviors.

Applied behavior analysis (ABA) may be seen as way to make troubling behaviors disappear. However, as Dr. Karyn Harvey told an audience of mental health professionals in Texas: “When we only address behaviors, we miss the true cause and root of difficulties.” Harvey is a psychologist with decades of experience in providing therapy to children and adults with developmental disabilities.

Dr. Nora J. Baladerian, a clinical and forensic psychol-

ogist and director of the Disability and Abuse Project of Spectrum Institute, also teaches this in her training programs for therapists and other service providers. Dr. Baladerian is critical of ABA because it asks the wrong question. She says that healing can only occur when the focus shifts from behaviors to causes.

When conservatees have a medical problem, they are entitled to the benefit of a full range of treatment options. All causes of the medical problem are explored. When bleeding is the problem, medical doctors look for the cause of the bleeding. They don't just apply a Band-Aid or prescribe a clotting medication to make the bleeding nuisance go away.

Conservatees who have troubling symptoms, including behavioral problems, are entitled to mental health services that address the symptoms as well as the causes. Simply referring them to an ABA specialist is not sufficient.

The state of California, through the judicial branch, has a duty under the due process clause of the U.S. Constitution to ensure the well-being of persons taken into its custody or placed under its protection. When this duty is violated by the state, federal intervention is warranted. This occurred, for example, when courts placed the state's prison health care system under receivership.

California judges have removed the right of these 43,000 adults to make their own medical decisions. The authority to select medical providers and choose forms of medical or mental health treatment has been delegated by the state to conservators. The decisions made by these agents of the state may cause liability not only to themselves but to the state government that gave them such power.

Depriving conservatees of the full range of mental health therapies that would be available to persons



without disabilities also may violate laws prohibiting disability discrimination. This includes the federal Americans with Disabilities Act and the state Unruh Civil Rights Act. Conservators and regional center case managers should consider the potential for civil liability under these laws before depriving a conservatee of meaningful psychological services from qualified mental health professionals.

There is also the potential for criminal liability if conservators or regional centers ignore a conservatee's obvious need for psychological therapy or if they choose to focus on behavior modification rather than mental health evaluation and treatment that addresses the underlying causes of those symptoms.

Penal Code Section 368 makes dependent adult abuse a crime. Conservatees are considered dependent adults. It would be a criminal offense for a conservator to willfully permit the health of a conservatee to be injured. Failing to secure treatment from a qualified mental health professional to address the underlying causes of troubling behaviors is clearly permitting the health of a conservatee to be injured.

Under Welfare and Institutions Code Section 15610.57, a conservator would be guilty of neglect for failing to provide medical care for the mental health needs of a conservatee. Someone who is displaying adverse behavioral, medical, or emotional symptoms from prior abuse needs a proper evaluation of the causes as well as a treatment plan that focuses on more than just suppressing the disturbing symptoms.

If a conservatee were crying out in pain, nobody would dare claim that gagging the patient to suppress the noise would be an appropriate form of treatment. A conservator who permitted such an approach could be subjected to civil and criminal liability. The same should hold true for the willful failure of a conservator to identify qualified mental health professionals and transport a conservatee to that professional for evaluation of the causes and development of a treatment plan that considers a full range of therapeutic options.

In theory this is all rather straightforward. What may be difficult, however, is finding a qualified mental health professional with experience treating people with developmental disabilities and who is acquainted with treatment options other than ABA methods.

Identifying such professionals and making that list available to regional centers, conservators, conservatees, parents, relatives, and service providers is a project that should be undertaken immediately. The Secretary of the California Health and Human Services Agency should convene an inter-agency task force to address this issue. It should involve the Association of Regional Center Agencies and the Department of Developmental Services. The California Psychological Association should be invited to participate as a consultant.

Because this matter involves individuals who are under the protection of the superior courts in ongoing legal proceedings, the HHS Secretary should invite the Judicial Council, California Public Defenders Association, County Counsels Association, Professional Fiduciaries Bureau, and the California State Association of Public Administrators, Public Guardians, and Public Conservators to participate too. Organizations that provide advocacy or services for people with intellectual and developmental disabilities should also be invited to participate.

The adequacy of mental health services for conservatees with developmental disabilities is an issue that also should be addressed by the California Legislature. A hearing by the Assembly's Select Committee on Intellectual and Developmental Disabilities would be an appropriate way for the Legislature to begin to address this important topic.

Such a legislative hearing should focus not only on the current availability of qualified mental health professionals who use trauma-informed care in their practices, but should explore ways in which the state can make such care more available. This includes creating incentives to develop better training programs for professionals so they can provide trauma-informed services to this population as well as encouraging more university students to go into this field after they graduate. ♦♦♦

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