



# STATE OF CONNECTICUT

## DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

*A HEALTHCARE SERVICE AGENCY*

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### **Testimony of Paul Amble, M.D. Chief Forensic Psychiatrist Department of Mental Health and Addiction Services Before the Judiciary Committee March 30, 2007**

Good morning, Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. I am Dr. Paul Amble, Chief Forensic Psychiatrist of the Department of Mental Health and Addiction Services, and I am here today to speak on **S.B. 1439, An Act Concerning Conservators and Probate Appeals.**

We wish to provide testimony on two aspects of this bill that are of concern to DMHAS.

1) The first is that Sec. 4 (h) (2) of this bill, which is relevant to our inpatient service delivery, proposes a change that is directly contrary to a provision of P.A. 06-95, passed by the General Assembly last year. In essence, H.B. 1439 (unless otherwise provided in the court's decree) requires a conservator to comply with all health care decisions made by the ward's health care representative or health care proxy. However, PA 06-195 stipulates that the conservator's health care decisions take precedence over those of a health care representative in three specified instances. We negotiated the exemptions contained in PA 06-195 last year in good faith with all the parties involved and believe we need to keep those exemptions if any changes are made at this time to the conservator statutes for the following reasons:

- In **Sec. 17a-543**, the legislature enacted "due process" related to involuntary treatment with psychiatric medications of individuals admitted to inpatient facilities on a civil basis, by creating a process for conservators to make decisions regarding treatment for patients who are unable to give informed consent.
- **Sec. 17a-543(e)(1)** requires conservators to:

"meet with the patient and the physician, review the patient's written record and consider the risks and benefits from the medication, the likelihood and seriousness of adverse side effects, the preferences of the patient, the patient's religious views, and the prognosis with and without medication."

- In **Sec. 17a-543a**, the General Assembly accomplished the same due process procedures, but for individuals found not competent to stand trial, which is in accordance with the 2003 U.S. Supreme Court decision in *U.S. v. Sell*.

Unless Section 4 (h)(2) of S.B. 1439 is amended to include language similar to that contained in P.A. 06-195, the legislature will be creating a conflict between two portions of the statutes, and will be potentially eliminating the ability of DMHAS inpatient facilities to seek appropriate involuntary treatment in certain circumstances — even when a patient is placing himself/herself or others at risk.

2) The second concern we wish to raise regarding S.B. 1439 is that Section 4 (h)(3) — as presently worded — will limit the pool of unbiased, neutral attorneys who may serve as conservators for individuals. We fully understand the need to protect an individual's civil rights, but we ask that you consider in your deliberations that individuals in our system may not be able to make good decisions because of their psychiatric disability.

As written, this section considerably narrows the probate court's discretion in appointing a conservator whenever a patient merely "*communicates a preference*" for a particular individual.

In addition, the section creates a new criterion for the probate court's consideration—namely, whether a proposed conservator "*has knowledge of the respondent's preferences regarding the care of his or her person.*" No attorney appropriately maintained on the panel of the Probate Court Administrator is likely to meet this criterion. Thus, this new requirement may result in the selection of a conservator who is more likely to agree with an incompetent respondent's preferences, rather than one who will be able to take a neutral stance when weighing the important factors in the balance.

The combination of these two changes represents a fundamentally different approach to the way Connecticut has heretofore conceived of the nature of substituted judgment and its appropriate balancing of interests. It could substantially interfere with our ability to treat those patients who require treatment in order to be well enough to leave hospital care, thus wasting precious and finite resources. It could also substantially interfere with our ability to treat individuals who are subject to various provisions of the criminal justice system. For the above-listed reasons, we do not support S.B. 1439 as currently worded.

It is our understanding that a compromise proposal has been offered by Judge Killian and a group that worked on this matter. We have seen that version, and it does include the exemption we would require.

Thank you for the opportunity to speak on issues of concern to DMHAS related to S.B. 1439. I would be happy to take any questions you may have at this time.