

**Testimony of Michael Norko, M.D., Director
Whiting Forensic Division, Connecticut Valley Hospital
Before the Judiciary Committee
February 16, 2007**

Good morning, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of the Whiting Forensic Division of Connecticut Valley Hospital, and I am here today to speak in support of **H.B. 7067, An Act Concerning the Appointment and Powers of Conservators and Special Limited Conservators with Respect to Psychiatric Treatment.**

In 2004, in response to the dicta of a U.S. Supreme Court decision (*Sell v. United States*), the Connecticut General Assembly created a civil procedure by which involuntary psychiatric medication could be sought for individuals charged with crimes who were committed to a DMHAS facility by the criminal court for purposes of treatment to restore competency to stand trial. That procedure was defined in CGS §17a-543a and was crafted as a parallel to the existing statutes governing the appointment of conservators with medication authority for civil psychiatric patients in inpatient settings [in CGS § 17a-543]. The procedure under CGS § 17a-543a consists of the appointment of a Special Limited Conservator (SLC) with authority to give or withhold consent to suggested medications, only during the time that a defendant remains not competent to

stand trial as determined by a criminal court and remains under court-ordered treatment to restore competence.

This new SLC mechanism has worked well, has been used approximately 20 times per year since it took effect in October 2004, and has been used preferentially to the criminal procedure for involuntarily medicating incompetent defendants under § 54-56d(k) – the latter has been used in only 3 cases since October 2004, and not at all since October 2005.

Often, defendants who decline to cooperate with psychiatric medications to treat their disorder will also decline to allow the treating clinicians access to their prior psychiatric treatment records (often as a manifestation of paranoid ideation). Former treaters are permitted to release such records [under CGS § 52-146(f)], but are not **required** to do so, and are often reluctant to do so. There is currently no provision in § 54-56d that allows the DMHAS facility charged with treatment to restore competency to procure such records to assist in planning effective treatment and avoiding ineffective treatment or treatment that has caused deleterious side effects for the individual in the past.

In this bill, we are asking that the statute regarding Special Limited Conservators be amended to specifically give to the SLC the additional authority to consent to the release of previous treatment records. This medical information is necessary to inform the responsible clinicians and the SLC about past treatment experience so that any planned and requested treatment has the benefit of knowledge of past experience.

We may currently petition the probate court to appoint a regular Conservator for the specific purpose of consenting to record release, but doing so has two distinct

disadvantages: (1) regular Conservators continue to remain in place unless an action is taken to remove them, whereas the SLC expires upon the completion of the treatment to restore competency; and (2) having an appointed Conservator and Special Limited Conservator may lead to unnecessary confusion about role overlap and respective authorities.

Giving this additional authority to the SLC, thus, seems to fit well with the task required of the SLC to make appropriate medical decisions for the individual, as well as with the time-limited and task-focused authority of the SLC.

The other purpose of the proposed amendment is to add specific declarations of the findings and burden of proof required for the probate court to appoint conservators with medication authority or order involuntary medication under CGS § 17a-543 and to appoint special limited conservators or order involuntary medication under §17a-543a, as well as the court order for involuntary medication under the CGS. These authorities already exist, but existing statute does not specify what the probate court must determine and by what standard of proof in order to render these appointments or orders. Our probate judges have, in all cases of which we are aware, interpreted that the intent was to require findings determined by clear and convincing evidence, but it would be cleaner to have a specific statutory statement to this effect so that there could be no confusion about either the necessary findings or the burdens of proof.

Thank you for the opportunity to address the committee today in support of H.B. 7067. I would be happy to answer any questions you may have at this time.

