CALIFORNIA PSYCHIATRIC ASSOCIATION

CAPITOL INSIGHT

When It Rains It Pours

Randall Hagar

Randall Hagar, CPA Director of Government Affairs

Things are always very busy at the California Psychiatric Association. In late August every two years legislators work furiously against deadlines, often well past midnight, to vote on bills remaining in a two year cycle. Any bill not voted by the close of session is terminal. For the 2007-2008 legislative session, not only two years of legislation, but also state budgets, regulatory and administrative actions have come and gone, something not easily summed up in a single column. If life is, as filmmaker and auteur Woody Allen said, 90% about showing up, your California Psychiatric Association (CPA) is alive and well having showed up on many key issues.

Psychologist practice of medicine bills certainly loom large in any recapitulation and have already been covered earlier in the year. Other CPA activities on behalf of you and your patients literally span dozens of issues. CPA is not a "one note Johnny" that only cares about incursions into the practice of medicine, or how much psychiatrists get paid. Quality of care, patient safety and access to services define the overall policy agenda of the CPA - a detailed summary will appear in an Annual Report later this year.

Here is a key-issues snapshot of your CPA dues at work.

Confidential psychotherapy notes and psychiatric medical records risked inappropriate disclosure in early drafts of a number of bills that ultimately did not "move" (legislative parlance for bills that are either not taken up by committees or not voted "out" of committee). SB 1415 (Sheila Kuehl, Santa Monica) initially mandated standards for maintenance and storage of medical records particularly requiring patient notification when medical records are about to be destroyed (which the author said would encourage more patient responsibility in care) did "move" to the Governor's desk after CPA staff negotiated an exemption for psychiatric records. Many possible methods of notification – mailing to a last known address for instance years after initially seeing a patient - risk inadvertent disclosure of sensitive information. The exemption for psychiatric records also spares psychiatrists a mandate to take up the issue of records destruction at initial assessments, and produce time consuming mail notifications prior to record destruction. CPA amendments took many hours over several months to achieve.

Senator Kuehl, Chair of the powerful Senate Health Committee, also authored a bill sponsored by Protection and Advocacy, Inc., SB 1515 (**use of seclusion and restraints in school discipline**) which also required long hours of negotiation in order to overcome an outright prohibition of the use of PRNs by qualified health providers, and the medically unsupervised use of physical restraints within school settings.

Senator Leland Yee, Ph.D., (Democrat - San Francisco; child psychologist) authored a **whistleblower rights protection** bill sponsored by the CPA, SB 1505, on the Governor's desk at press time. CPA sponsored SB 1505 after the Chair of the CPA State Facilities Task Force was subject to multiple acts of retaliation by supervisors at the prison mental health program at the Vacaville Medical Facility for advocating strongly against degradation of standards of care inherent in several proposals of the administration. Senator Yee also authored another CPA supported bill now also on the Governor's desk, SB 1356,

which removed a contempt of court penalty for **victims of domestic violence** who choose not to testify against the perpetrator.

Among other bills CPA supported: **Senator Darrell Steinberg** (Democrat - Sacramento; Senate President Pro tem-elect) authored SB 1651which provided uniform statewide standards for **mental health courts** and a pilot **mental health treatment program for parolees**. SB 1651 died in the Assembly Appropriations Committee because of associated parole treatment costs – unavoidable in another crisis year for the state budget.

CPA also supported and worked actively on several **Republican authored bills**: AB 3010 (Blakeslee – Atascadero) which **bans tobacco products** on the grounds of state hospitals (on its way to the Governor at press time); and AB 2652 (Anderson – San Diego) which would have authorized **marriage and family therapists to train in state prisons** and which died because of opposition by unions and the California Psychological Association, fearful it would take prison jobs away from psychologists.

A huge issue - **impaired physicians** - also found itself the subject of legislation after the California Medical Board (MBC) diversion program ceased operations on June 30, 2008. Fortunately a work group composed of members of the CPA, the California Medical Association and the California Society for Addiction Medicine had been preparing since the summer of 2007 to step into the gap with 2008 legislation filling the void left for physicians impaired by substance use or mental illness. AB 214 (Fuentes; D – Los Angeles) is the product of a thorough and thoughtful review of options by the work group. A gut-and-amend bill introduction in June establishes the California Physician Health Plan, after a furious round of lobbying by work group member lobbyists and members of the workgroup; AB 214 is expected to make it to the Governor's desk.

Children's mental health has been the subject of a number of pieces of legislation as well. Amongst bills followed by the CPA are those which deal with juvenile justice issues, juvenile substance abuse, safe surrender of infants and foster care. Of particular interest is a bill by Sonoma County based Assemblymember Noreen Evans, whose AB 2117 has been over two years in the making. Starting with 2007 legislation the sole focus of which was to **count the numbers of psychotropic medications** taken by children and youth, CPA members and staff have been active participants in conversations sponsored by Ms. Evans with many stakeholders, prominent among them mental health civil rights attorneys, to try to define a reasonable balance between the state's duty to optimize the delivery of health care services to dependent children and wards of the court on the one hand, and the due process rights of children on the other. After literally months of negotiation, language had been tightly crafted which removed all but one CPA objection to a juvenile court mediated process of psychotropic administration within the context of a comprehensive treatment plan conducted by qualified professionals. However, before that issue could be addressed AB 2117 was held in the Senate Appropriations Committee because of fiscal concerns. The subject matter, a signature theme for Assemblymember Evans, will very likely be revisited during the 2009-2010 legislative session.

In **private sector health care delivery** CPA has been quite active on a number of issues that affect not only psychiatrists and their patients, but also the house of medicine. Early this year, access to care regulations adopted by the state Department of Managed Health Care were rejected by the state Office of Administrative Law, which adopted the CPA position that the regulations (which would have severely and adversely affected access to care) were not authorized by nor consistent with 2002 legislation requiring their adoption. CPA as a member of the 29-member California Coalition for Mental Health continues to participate in discussion and workgroups with the Department as it proceeds in the process to adopt a fourth set of draft regulations expected late this year. These regulations involve not only access to care, but fair physician contracts, timely claims payments, and adequate rates of reimbursement.

CPA has also been involved with other bills of interest to our **members in private practice**: CMA sponsored AB 1945 (De La Torre –Democrat, Los Angeles) would make it much more difficult for health service plans to **rescind patient's health care contracts** the so-called process of retroactive underwriting; SB 1379 (Ducheny – Democrat, San Diego) which would provide **loan repayment** for young physicians practicing in underserved areas; and, AB 2967 (Lieber – Democrat, Mountain View) a bill which would have imposed fees and data **reporting requirements on physicians**, and was subsequently amended to exclude physicians. All are currently moving.

CPA **members in private practice** will also be quite glad to hear that CPA actively provided an important assist to Assemblymember Jim Beall (Democrat – Santa Clara) in putting a **full mental health insurance parity bill**, AB

1887, on the Governor's desk. AB 1887 would provide that insurance coverage and health service plans must cover all DSM diagnoses, including substance abuse "on the same terms and conditions as other health conditions." Assemblyman Beall has carved out as his own special legacy in the Legislature, authoring bills on such topics as local juvenile substance treatment coordination; child and maternal health issues related to substance use; and, establishing a state Secretary of Addiction Prevention and Recovery.

CPA has also participated in **CMA led efforts** to oppose optometric surgery and treatment of glaucoma as expansions of optometrist's scope of practice unjustified by current optometrist education training and experience. CPA observed closely as CMA also defeated an effort by nurse practitioners to expand their scope of practice to be able to practice without supervision, which like the defeat of the psychologist prescribing bill, SB 1427 (Calderon – Democrat, Los Angeles) earlier this year, did not receive a single vote in committee.

Housing: CPA was prepared to step in and oppose any of five bills still active in 2008 which would have promoted not-in-my-back-yard interests in preventing new housing and treatment facilities for people with disabilities from developing in communities. Fortunately, these bills as they do each year, do not survive much beyond their first committee hearings if they are the subject of hearings at all.

CPA has also been active in **hospital issues** such as the crisis in emergency departments; 24 hour mental health holds; balanced billing; and ensuring physician determinations of medical necessity for acute inpatient admissions remain under the control of the attending physician and are less subject to arbitrary denials by health plans. CPA has also participated in the drafting and promotion of legislation regulating **promising new professions** such as Drug and Alcohol Counselors and Licensed Professional Counselors. Those bills will be accounted for more fully in the Annual Report.

And all the rest: The forgoing does not include CPA work on formularies ensuring access to needed medications in institutions like prisons, state hospitals, Medi-Cal, and private health plans or tracking medication access in Medicare Part D plans for the American Psychiatric Association. Prisons, inmates, parolees, and reform of the correctional system are also topics that CPA has followed closely and when it is appropriate has initiated action in support of access and quality of care. The CPA has also played a part in shaping Mental Health Services Act (MHSA, Proposition 63) policy and practices. Most recently one of CPA's access agenda key policy planks saw fruition in a first for California: the establishment of a grant program to enable four physician assistant training programs to developed advanced training in psychiatry for physician assistants using MHSA funds.

As you can see, the CPA policy agenda is broad. Elsewhere in this issue other topics are addressed which are arguably as important as any other activity of the CPA, such as scope of practice regulations, prescribing pilots for psychologists in prisons, and next year's psychologist prescribing legislation. But the key point here is that CPA does NOT neglect business on any one front to take care of business on others. Tell that to doubters!

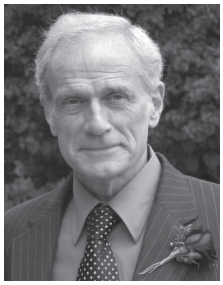
These activities are not merely the activities of dedicated staff, but of countless hours that CPA members spend on public policy matters throughout the year. The CPA Government Affairs Committee for example has 20 members, consultants and advisors. Each month two-hour long phone calls of the Committee occur during which the members review the often voluminous material provided by staff in order to arrive at bill positions and policy decisions. Every third month, the Committee meets for an all-day, face-to-face Saturday session to again deal with the mountain of issues confronting organized psychiatry in California. The CPA has over 20 committees like the GA Committee. The volunteer spirit of these many psychiatrists more than anything contributes to the CPA success in Sacramento.

If you want to help there are many ways you can do so. Join the CPA Key Contact system and get notifications and alerts to write letters on key pieces of legislation at critical junctures of the legislative process. Call the office at (800) 772 - 4271 and ask for Lila Schmall to get more information.

CPA is also successful because of the generous contributions of members to the CPA Advocacy and Litigation Fund (which funds advocacy requiring extraordinary resources because the stakes are very high, like psychologist prescribing legislation) or the CPA Political Action Committee which supports legislators who understand issues of importance to psychiatrists and their patients.

See you at the Annual Meeting in Tenaya in late September, please come and talk to me about issues that you think are important.

Psychologists and the State: Collusion of Interests Threatens Medical Care



Ronald C. Thurston, M.D.

By Ronald C Thurston, MD, Chair Government Affairs Committee

Psychologists have sought career expansion for many years. Who can blame them? They are the most educated of the non-medical "mental health providers" yet their scope of practice and pay is not much different than other psychotherapists. The bulk purchasers of mental health care—governments and insurance companies—pay for scope, not education. Psychologists earn only half of what psychiatrists earn.

Psychologists' Solution:
Medical Authority for Psychologists.

A 2006 manifesto proclaims that prescriptive authority "will ultimately result in parity for psychologists in terms of reimbursement and professional opportunity."

The California Psychological Association and lately NAPPP, its more aggressive rival, have introduced legislation to authorize the Board of Psychology to create an independent practice of medicine.

Psychologists have also litigated for expansion of medical responsibilities. There was the infamous CAPP v Rank and, more recently, the expensive but inept Walker lawsuit. They have proposed pilot projects and regulatory changes.

Recently, prison psychologists proposed that the state fund a prescription training pilot project similar to the long-defunct Department of Defense Psychopharmacology Demonstration Project. We are opposing the plan.

The State, for its part, has sought for years to reduce costs in state institutions, most recently and notably in prisons. The federal court has taken jurisdiction of prison health care, obliged pay raises and is now demanding 8 billion new dollars to build 10,000 hospital beds. Psychologists cost only half of what psychiatrists cost.

State's Solution: Medical Authority for Psychologists.

The State Department of Public Health has again proposed regulations that would authorize psychologist "attending clinicians" to manage total hospital care—admission, treatment and discharge, and seclusion and restraint—independent of physician direction. Evidently mentally ill people are not entitled to competent medical care. DPH regulations apply at all California hospitals. The proposed regulations would degrade care and endanger patients at public and private hospitals throughout California. We are vigorously opposing these changes.

The California Psychiatric Association understands the cost and access problems cited by the proponents of demedicalization. However, we do not understand how the subtraction of medical competence adds value to patient care. And we do not believe that prescription training adds medical competence to psychologists.

Our Solution: Extend competent medical care within a coherent system of equal standards and uniform regulation. We have promoted psychiatric training for nurse practitioners and for physician assistants. We have promoted continuing education and support for primary care physicians. We have promoted telepsychiatry in rural and underserved areas.

We welcome plans by the Department of Mental Health to use Mental Health Services Act funds to provide psychiatric training for physician assistants. We have provided two psychiatrists to serve on the task force.

Ironically, the physician assistant project will be managed by the Office of Statewide Health Planning and Development (OSHPD)—the same Office that would be asked to consider "prescription training" for psychologists. We will argue that the PA project is the medically safe and sound alternative.

We're working on good solutions, and we're opposing the bad. We can prevail but it won't be easy and it's never been cheap. The collusion dynamic has created a perfect storm; the biggest challenge we've faced in decades. Every man, woman and child psychiatrist needs to pitch in for this one. Pitch in: CPA Advocacy and Litigation Fund, 1029 K Street, Suite 28, Sacramento, CA 95814.

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