



CALIFORNIA  
PSYCHIATRIC  
ASSOCIATION

# CAPITOL INSIGHT

## The Object Lesson of Oregon – Barbarians at the Gate, or RxP Pending before the Governor of Oregon

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SB 1046 is the latest and most successful version of a bill in Oregon which would allow psychologists without medical training to practice medicine in Oregon. In February, the Oregon Senate Health Committee, meeting in a month long special session of the Oregon Legislature, approved SB 1046 by a unanimous vote. Shortly thereafter the Oregon Joint Legislative Ways and Means Committee sent SB 1046 to the floor of the Senate, where it was read a second and third time (third readings immediately precede a vote) on the same day. Rule waivers shorting time had been granted to fast track the bill ostensibly because of limited time in the February Special Session of the Legislature. The final vote on the Senate floor was 18 in favor and 11 against SB 1046. The Oregon House of Representatives subsequently and hastily approved the bill and sent it to the Governor, where it is pending at press time.

A variety of factors contributed to the success in getting this bill to the Governor. The Senate Health Committee Chair (a nurse) who was the Senate sponsor, spoke of the bill as a consensus bill and a product of a legislatively mandated study group from the 2009 legislative session. She worked hard to ensure its passage in her committee on a unanimous vote. The lone physician on the Senate Health Committee, an osteopath, gave a courtesy vote to move it out of committee, though he remained opposed and spoke against the bill on the floor of the Senate. Legislative leadership support was also in evidence as SB 1046 quali-

fied as an “emergency measure” thereby eligible to be considered in a special session. Leadership approval was also demonstrated by the waiving of rules of procedure to fast track a vote on the bill on the Senate floor. Factional tensions were high creating fatigue on the part of members of the legislature, some of whom did not feel strongly either way on the bill. Some of the legislators may have voted for it simply to put squabbling and bickering over the bill to rest: one variant or another of the bill has been seen in the Oregon Legislature for the last 10 years. There was a deluge of communications on the bill with many emails from out of state – not always a good thing in a small independent state with a frontier mentality and a distrust of “outsiders.” There were also elements of controversy in the study group which produced the outline for the bill: charges and countercharges about unfairness were lobbed incessantly through the study group process and the legislative session. In the end it is safe to say that many legislators were thoroughly sick of the issue.

With the bill on the Governor’s desk, the playing field has shifted and there are significant pockets of unease in Oregon. Community leaders such as an associate editor of the Oregonian, the state’s largest newspaper, wrote a column asking for a Governor’s veto and calling the measure “hasty,” “half-baked,” “nuts” and unsafe.



Randall Hagar

Thankfully, no such bill has appeared in the 2010 California Legislative Session, but, proponents of such measures in California are sure to take inspiration from this struggle on our northern border.

SCOPE OF PRACTICE Regulations Finalized: The Department of Public Health Scope of Practice regulations were approved by the Office of Administrative Law on March 3, 2010 and will take effect on April 2, 2010. The regulations, to refresh your memory, would allow non-physicians to assume “attending” status in all state licensed health facilities and assume sole authority to direct patient care. This will mean that non-physicians can admit, transfer and discharge patients, order seclusion and restraints, as well as determine when physician consultation and treatment is necessary. CPA Officers, members and staff as well as CPA Legal Counsel have all presented opposition testimony to various iterations of draft regulations for nearly two years, joined by the American Psychiatric Association, the California Medical Association and a number of California medical specialty societies. This is not good news for patient safety and the quality of medical care in any health facility licensed by the state. This would include acute general care hospitals, acute psychiatric hospitals, skilled nursing facilities, institutes for mental disease, intermediate care facilities as well as state hospitals and correctional facilities.

The CPA at press time is considering options to meet this challenge.

Proposition 63 Funds Diversion – The legislature has so far refused to accept the Governor’s budget proposal to divert Proposition 63 funds to help close a budget gap of over \$20 billion. The Governor proposed to divert \$452.3 million for two consecutive years, to address current year budget deficits with more funds “triggered” for diversion if the state doesn’t receive nearly \$8 billion in federal funds. The total amount, if triggered, could be \$1.6 billion. These actions require approval by the voters on a ballot initiative which would occur no sooner than the June 2010 Primary. Neither house of the legislature had a budget trailer bill proposing this diversion of funds in the emergency budget session seeking solutions to current budget year deficits. However, budget deliberations for the 2010-2011 Budget will commence in earnest in May and June. Despite Senate President Pro Tem Steinberg’s

public pronouncements that this proposal is off the table, vigilance is warranted. He was heard to voice the same sentiment last year and in last year’s special election measure 1E proposed a similar diversion of funds from Proposition 63 – and was defeated by voters on a nearly 2-1 vote with NO votes totaling 66.7% of the votes cast. This statistic has not gone unnoticed by legislators sitting on the budget committees. When state Department of Mental Health Director Steve Mayberg, Ph.D. started testimony on this item before the Senate Budget Committee, the Chair, Senator Ducheny (D – San Diego) leaned over and asked “What’s different from last year?” referring to the margin of rejection of 1E at the polls.

Legislative Action: In the first two months of this year 2,064 bills were introduced by the legislative deadline of February 19, 2010. CPA staff have reviewed over 200 of those bills, and referred about 50 of them to the CPA Government Affairs Committee which is busy reviewing and adopting positions on many.

#### CPA CO-SPONSORED BILLS:

SB 1169 (Lowenthal, Alan) - Health Care Coverage: Claims: Prior Authorizations. This bill, co-sponsored by the CPA as well as several members of the California Coalition for Mental Health is the third in a series of annual managed care bills covering activities of health plans. This year’s bill will do two things: 1) Require health plans to provide a tracking number for all claims, appeals and other procedural processes governed by the Knox Keene Act - which regulates health plans; and, 2) Much like the federal parity act now in effect, SB 1196 defines conditions that limit benefits and therefore treatment to patients and provides that any treatment limitation is subject to the California Mental Health Insurance Parity law. This would include but not be limited to: utilization review, prior authorizations, formulary design, and network recruitment and credentialing.

AB 526 (Fuentes) - California Physician Health Program. The CPA has co-sponsored this bill with the California Medical Association (CMA), and the California Society for Addiction Medicine (CSAM) in order to replace the now defunct diversion plan for impaired physicians of the Medical Board of California (MBC). Due to a multitude of political factors some related to the bill and others not and therefore beyond control of

co-sponsors, this bill has stalled in the California Senate. It is unclear what its prospects are at this time, but it is theoretically possible for AB 526 to move forward at any time before the end of the legislative session, which ends at midnight on August 31, 2010.

In an effort to have a vehicle ready and waiting for the possible enactment of AB 526, a non-profit entity, California Physician Health, Inc. (CPH), has been established, with a Board of Directors that include representatives of CMA, CPA, CSAM, and the California Hospital Association. This Board has developed a budget, job descriptions for an executive director and a medical director, and will begin fundraising soon. Plans are to be in limited operation in the latter part of 2010. CPH will not be a direct service provider, per se, but will establish standards for monitoring and testing of impaired physicians, and provide an important oversight and coordination function particularly in relation to quality issues.

Related licensing board enforcement reform activities: CPA Counsel Dan Willick has a column in this issue that covers a particularly egregious piece of legislation, SB 1111 (Negrete-McLeod; D – Chino). The following will provide a wider context for his discussion.

A spate of media articles in 2008 and 2009, most notably about nurses, pointed out that some licensed health care practitioners who arguably were not fit to practice were still licensed to practice 5 years after disciplinary proceedings commenced, or were still licensed while serving time in prison, or when licenses were suspended in other states, etc. This realization started a process in motion to reform the practices of ALL health care professional licensing boards, provide uniform standards for those boards with respect to enforcement activities, and to sunset all of the diversion programs extant overseen by those boards. This is not unlike the process in which the MBC divested itself of the physician diversion program in 2008.

Unfortunately, as you will read in Mr. Willick's article the efforts to date would shift licensing boards drastically towards a punitive model. In the 1980's Texas experienced similar seismic events related to its own medical board but was forced to reintroduce a diversion option in 1995 after compelling arguments emerged that an "enforcement only" model was not having the intended effect and enhancing public safety. Texas then rein-

roduced confidential, non-disciplinary rehabilitation orders when physicians self-report issues with drug, alcohol or substance use. Now, in Sacramento, forces gather to do battle to determine the ultimate philosophy of licensing boards related to discipline. CPA is right in the middle of those activities and fighting to keep a rehabilitation option for licensee due process. At this date the CPA has organized a coalition to keep psychotherapy notes from being accessed by licensing board investigators without patient consent. We will keep you posted.

Other bills of interest:

AB 1599 (Beall) – Alcohol and Other Drugs (AOD) Screening and Brief Intervention; Position adopted: APPROVE

AB 1600 (Beall) - Mental Health Insurance Parity; Position adopted: SUPPORT

AB 1655 (Evans) - Psychotropic Medications for Dependent Children; Position WATCH

AB 1694 (Beall) - Alcohol-Related Services; Position adopted: APPROVE

AB 1701 (Chesbro) - Hypodermic Needles/Syringes; Position adopted: APPROVE

AB 1925 (Salas) - Diversion: Veterans Behavioral Health Courts; Position: APPROVE

AB 2112 (Monning) - Prescription Utilization Data Use in Marketing; DISAPPROVE

ACR 123 (Chesbro) - California State Hospital Memorial Project Remembrance Day; Position adopted: APPROVE

SB 840 (Yee) - Reporting Crimes; Position adopted: APPROVE

SB 880 (Yee) - Snow Sport Helmets for Children and Youth; Position: APPROVE

SB 1020 (Wolk) - Performance Based State Budgeting; Position adopted: APPROVE

SB 1029 (Yee) Hypodermic Needles/Syringes; Position adopted: APPROVE

If you would like to review the content of any bill you may do so by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov), the Legislative Counsel's website.

## Special Needs Trusts

By Randall Hagar

If you have or know of disabled patients with aging family members, you need to read this!

The Proxy Parent Foundation (PPF) provides two services to families and individuals: 1) Protecting the benefits of disabled individuals receiving such government benefits as SSI, SSDI, or Medi-Cal; and, 2) Providing “family like” personal support services for people with mental illness.

An individual may be disqualified from SSI and Medi-Cal if, for instance, parents die leaving their estate to that individual, and the assets in that estate total more than \$2,000. People with severe and persistent mental illness depend on government benefits for monthly checks to pay for board and care, to pay for visits to their psychiatrist and for their medications, thus helping them survive safely in the community. If they are unfortunate to suffer the loss of parents (who more than likely are providing both substantial emotional and financial support to them) and they inherit assets from those parents above these thresholds they could stand to lose these benefits – effectively throwing them out in the street.

PPF was created to shield or protect a disabled individual’s benefits and to replace the care and support that families often give to loved ones who have mental disorders.

PPF helps to protect an individual’s public benefits by helping the family establish a special needs trust (SNT). A SNT is a legal entity and estate planning tool which by law may hold and administer the resources of an estate for the benefit of a disabled individual. The establishment of the trust protects against public benefit disqualification. The trust assets may be used legally in certain specified ways to sustain and support the individual while not jeopardizing their monthly benefit checks or Medi-Cal payment for medical and psychiatric services. In practice they must supplement rather than supplant government benefits. SNTs may receive and administer inheritances, settlements or other windfall funds.

But, while establishing a SNT is necessary, it may be insufficient by itself to maintain the individual safely in the community. PPF addresses the loss of family by standing

in as a “proxy” and providing services and supports that fill the gap – thus “proxy parent” – with funds provided for this purpose in the SNT. Just like a caring family, PPF social service staff, Personal Support Specialists (PSS), become friends and advocates for the individual. Activities of PSS may include finding and moving the individual to suitable housing, medication education, helping maintain health care, life skills tutoring, obtaining work and education, social activities, friendship, shopping, or entertainment.

Funds for these purposes may be deposited in the SNT while family members are still alive, or they may be funded through a bequest upon death.

PPF may be designated as the Trustee for a SNT, or any other person may be designated with that capacity. PPF currently administers 38 trusts with assets ranging from \$10,000 to more than \$1 million and has helped over 350 families set up Proxy Parent Foundation-PLAN of California Special Needs Trusts. PPF provides financial and legal expertise to oversee the management of a “pooled trust” which combines multiple individual trusts to achieve economies in administration and fees. The Oppenheimer Trust Company provides money management expertise and day-to-day administration of the Master Pooled Trust.

So you won’t be confused thinking there are two entities out there: The Planned Lifetime Assistance Network (PLAN) of California has changed its name back to the Proxy Parent Foundation, the original name of the enterprise when established in 1991.

PPF is a dba of Planned Lifetime Assistance Network (PLAN) of California, and is a California 501(a)(3) nonprofit corporation. PPF is overseen by a Board of Directors, members of which are Elizabeth Galton, MD, past President of the California Psychiatric Association (CPA), as well as Randall Hagar, CPA Director of Government Affairs.

For more information you may visit the website: [www.proxyparentfoundation.org](http://www.proxyparentfoundation.org), email to [PLANofCalifornia@aol.com](mailto:PLANofCalifornia@aol.com), or call toll-free 888.574.1258