

# ACTION REPORT

State of California - Department of Consumer Affairs

No. 42, December 1990

## President's Column

J. Alfred Rider, M.D., President

First, I would like to thank all those who made comments to me, personally or in writing, concerning the last *ACTION REPORT*. I must say I was pleasantly surprised to find them all to be favorable.

In this last issue of *ACTION REPORT* for 1990, I will make some brief remarks on two bills which have been signed by the Governor. I also will comment on some complaints I received about the Medi-Cal Program, and make some remarks on the AIDS crisis.

### LEGISLATION

In this *ACTION REPORT* you will find a summary of several bills affecting the medical professions which were monitored by the Medical Board during the 1990 legislative session, and were signed by the Governor. Of these, there are two major bills that are worthy of special consideration. If you wish a full copy of any of these bills, please write to me directly.

Senate Bill 2036: This "truth in advertising" bill impacts physicians' advertising. It requires that if a physician claims certification by a specialty board, such board must be one that is approved by the American Board of Medical Specialties, or by the Medical Board of California. The bill's intent was to prevent physicians from falsely advertising that they are specialists.

In my view, this bill leaves some things undone. First, any physician who claims a specialty should have to specify which specialty. Second, the bill does nothing to prevent "bogus boards" from being created in the first place. Thus, it can be anticipated that extra time, effort and expense will be necessary to investigate and police some "specialty boards".

Senate Bill 2375: This is the most complicated of the 1990 bills. It took con-



Dr. Rider

siderable time and effort by the Medical Board, legislators, sponsors, and several other affected agencies. Essentially, SB 2375 creates a special bureau in the Attorney General's office to handle physician and allied health practitioner disciplinary cases. It requires the Medical Board to set as a goal the improvement of its disciplinary system by January 1, 1992, so that an average of not more than six months (one year for complex cases) will elapse from the receipt of a complaint to the completion of an investigation.

It requires district attorneys to inform the Medical Board whenever felony charges are filed against one of its licensees. It changes the procedure for administering competency examinations in disciplinary cases, to eliminate redundant retesting. Further, it requires coroners to report any findings that may indicate that a death was the result of a physician's gross negligence or incompetence. It is hoped the net effect will be a streamlining and speeding up of the disciplinary process. However, there will be a significant fiscal impact on the Medical Board.

### THE MEDI-CAL PROGRAM

The Medi-Cal Program affects all physicians in the state to some extent or other -- even though many physicians do not participate -- as well as approximately four million consumers who qualify. I have heard complaints concerning the program from several sources. Some leg-

islators complain that not enough physicians are participating in the Medi-Cal Program. Some patients complain that sometimes it is difficult to find a physician to accept them. Finally, I hear many complaints from physicians and office managers concerning billing, reporting procedures and reimbursements.

These latter complaints can be summarized as follows: The physicians are not getting paid a fair amount for their services. In many cases, they report receiving only 33% of the charges billed. Some argue that only 10% of their routine charge is reimbursed. In many cases, physicians feel that the reimbursement does not cover their overhead. There has been no general increase in physician reimbursement rates for over five years.

Another complaint has been that the directions and forms for reimbursement are far too cumbersome and unwieldy. They are so complicated that it is very easy to make an error or omission which results in a disallowance of the claim. In many instances, this disallowance comes after the so-called six month period in which physicians must submit claims or have the whole claim denied.

Another complaint is that it is very difficult to get prior authorization for treatment. I hear the same complaints from hospitals. Finally, there have been complaints that the Medi-Cal reviewers are far too strict, demand extensive documentation which in many cases appears unwarranted, and serves to put physicians in a position of trying to create a good "paper record" instead of spending their time actually taking care of patients.

There have been reported instances wherein there appears to be excessive zeal in reviewing a physician and his office records. This can result in disallowing legitimate claims or reducing reimbursement for a paid level of service to the point where it becomes economically onerous and unfeasible.

I do not wish to blame anyone, as I am sure that everyone has good inten-

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# DISCIPLINARY ACTIONS

July 1, 1990 to September 30, 1990

## PHYSICIAN AND SURGEON DISCIPLINE

**ADKINS, MORRIS P., M.D. (A-028462)**  
- Los Angeles, CA  
2234(e), 2242, 2237, 2238 B&P Code  
Conviction for violating statutes regulating controlled substances. Routinely sold triplicate prescriptions for \$100.  
Revoked. Default decision.  
July 4, 1990

**BAHRAMBEYGUI, GHASSEM, M.D. (G023545)** - Calexico, CA  
2234 B&P Code  
Stipulated decision. Failed to maintain and complete proper pre-natal records for pregnant patient.  
Revoked, stayed, 5 years probation on terms and conditions.  
August 17, 1990

**BARNES, JOHN B., JR., M.D. (G043007)**  
- Los Angeles, CA  
2236, 2237 B&P Code  
Federal conviction for unlawful distribution of controlled substances. Selling completed prescription blanks for dilaudid. Also conviction for receiving stolen goods.  
Revoked.  
September 2, 1990

**BERKOWITZ, FREDERICK, M.D. (G003926)** - Anaheim, CA  
810, 2234(a)(e), 2261, 2262 B&P Code  
Engaged in dishonest conspiracy to defraud insurance companies through false medical records, false hospital records, and fraudulent billings to justify large payments for cosmetic surgeries (tummy tucks, eyelids, nose jobs, etc.) not covered by health insurance.  
Revoked, stayed, 6 years probation on terms and conditions, including 6 months suspension.  
September 6, 1990

**BURSTEIN, DARRELL, H., M.D. (G026970)** - Beverly Hills, CA  
490, 2236, 2237 B&P Code  
Stipulated decision. Conviction for failing to make and keep records relating to the acquisition and dispensing of 26,000 methaqualone tablets (Quaalude).  
60 days suspension, stayed, one year probation on terms and conditions.  
September 11, 1990

**DUGRE, PAUL E., M.D. (A016828)** - San Diego, CA  
2234(b)(d) B&P Code  
Gross negligence and incompetence in the management of a home birth with complications.  
Revoked, stayed, 5 years probation on terms and conditions.  
July 29, 1990

**FRIEDMAN, LEONARD R., M.D. (G009267)** - Boston, MA

2305 B&P Code  
Revocation by Massachusetts Board for sex with patient.  
California: Revoked  
July 4, 1990

**GREENSTEIN, JAY A., M.D. (A025998)**  
- Bakersfield, CA  
2236 B&P Code  
Stipulated decision. Conviction for Medical fraud.  
Revoked, stayed, 5 years probation on terms and conditions, including 60 days suspension.  
August 5, 1990

**GUNN, HERBERT H., JR., M.D. (C035382)**  
- College Park, GA  
2305 B&P Code  
Stipulated decision. Discipline by Georgia Board.  
California: Revoked  
September 28, 1990

**HUNT, JOSEPH B., M.D. (C026840)** - San Diego, CA  
2237, 2242, 2238 B&P Code  
Stipulated decision. Conviction for prescribing Diazepam for non-legitimate purpose. Prescribing without good faith exam and medical indication.  
Revoked, stayed, 5 years probation on terms and conditions, including 45 days suspension.  
September 12, 1990

**KATO, CHARLES K., M.D. (010942)** - Los Angeles, CA  
725, 2234(b)(c)(d)(e), 2242, 2261, 2262 B&P Code  
Excessive prescribing of controlled substances without prior exam and medical indication. Gross negligence, incompetence, repeated negligence, and false records in his diagnoses, records keeping, and prescribing practices.  
Revoked. No appearance by respondent.  
July 7, 1990  
JUDICIAL REVIEW FILED - NO STAY ORDER ISSUED

**LIPTON, JAMES EVANS, M.D. (C030240)**  
- Los Angeles, CA  
822, 2236, 2234(b)(c)(d)(e), 2261, 810 B&P Code  
Convictions for false bomb threats; for defrauding innkeeper and cab driver. Gross negligence, incompetence and repeated negligence in care of patients. False record and false insurance claim. Mental illness now controlled by lithium therapy.  
Revoked, stayed, probation for life on terms and conditions.  
August 30, 1990

**LUND, GAIL, M.D. (G054046)** - Sacramento, CA  
2305 B&P Code  
Discipline by Massachusetts Board for

Copies of complete disciplinary Decisions and Accusations (Statements of Charges) may be ordered by writing to:

MBC Enforcement  
1426 Howe Avenue  
Sacramento, CA 95825-3236

For quick, orderly processing, please send your request by letter and enclose a check based on \$2.00 for each copy of a decision or an accusation. Give complete name and license number of doctor, as listed here. PLEASE, NO TELEPHONE REQUESTS.

alcohol problem.  
Revoked, stayed, 5 years probation on terms and conditions.  
October 9, 1990  
JUDICIAL REVIEW RECENTLY COMPLETED

**MARKS, ARTHUR R., M.D. (C011134)**  
- La Jolla, CA  
2234(d) B&P Code  
Stipulated decision. Incompetence in prescribing synthroid and potassium without medical indication to weight control patients.  
Revoked, stayed, 5 years probation on terms and conditions including 90 days suspension.  
August 21, 1990

**MARKS, GREGORY ALLEN, M.D. (A033274)** - Cherry Valley, CA  
2305, 2236, 3527(c) B&P Code  
Stipulated decision. Medical privileges suspended by U.S. Navy. Disciplined by Florida Board. Conviction for carrying concealed weapon.  
Revoked, stayed, 5 years probation on terms and conditions.  
July 13, 1990

**MC ALPINE, LAWRENCE L., M.D. (C022630)** - Oxnard, CA  
2234(d) B&P Code  
Stipulated decision. Gross negligence in managing an incomplete abortive curettage. Prior discipline.  
Revoked, stayed, 5 years probation on terms and conditions, including 120 days suspension.  
July 30, 1990

**MORRISSEY, WILLIAM JAMES, M.D. (C015217)** - Sacramento, CA  
725, 2234(a)(e), 2236, 2242 B&P Code  
Stipulated decision. Conviction for petty theft related to prescribing controlled substances without a legitimate medical purpose. Excessive prescribing without prior exam and medical indication.  
Revoked, stayed, 5 years probation on terms and conditions, including 60 days suspension.  
July 13, 1990

**ROCK, HERMAN H., M.D. (G005460)** - Citrus Heights, CA 2234, 2305 B&P Code

Continued, Page 3

## DISCIPLINARY ACTIONS

Continued from page 2

Disciplinary actions by Nevada Board and New Mexico Board.

Revoked  
July 5, 1990

**SPERTELL, ROBERT BRUCE, M.D.** (G037289) - Redwood City, CA

726, 2234(a)(b)(c)(e), 2236 B&P Code  
Stipulated decision. Conviction for sexual battery related to sex games in motel with teen-age girl.  
Revoked.  
September 25, 1990

**STARR, CHARLES M., M.D.** (C006049) - Burbank, CA

2234(c), 2242 B&P Code  
Stipulated decision. Repeated negligent acts for furnishing drugs without good faith prior examination.  
Revoked, stayed, 5 years probation on terms and conditions.  
July 11, 1990

**WALCHEF, LUBEN, M.D.** (A020987) - San Diego, CA

2234(b)(c)(d) B&P Code  
Stipulated decision. Gross negligence, incompetence and repeated negligent acts in four patient cases.  
Revoked, stayed, 10 years probation on terms and conditions, including one year suspension.  
August 6, 1990

## VOLUNTARY SURRENDER: PHYSICIAN & SURGEON

**BENVENUTI, HANSEL, M.D.** (C016146) - Newport Beach, CA  
August 4, 1990

**JACOBS, SYLVESTER C., M.D.** (A027870) - Sepulveda, CA  
July 4, 1990

**LANE, WILLIAM EDWARD, M.D.** (G029547) - Fresno, CA  
August 13, 1990

**MARKWOOD, CARL, M.D.** (G003777) - Sacramento, CA  
August 20, 1990

**REICHARD, JAMES W., M.D.** (A015399) - Corona, CA  
September 10, 1990

**YANCEY, WILLIAM A., M.D.** (C012561) - San Diego, CA  
July 13, 1990

## VOLUNTARY SURRENDER: REGISTERED DISPENSING OPTICIAN

**BO-AN DANG OPTICAL (D-3668)** - Garden Grove, CA  
August 22, 1990

## ACUPUNCTURISTS DISCIPLINE

**CHO, SHENG G., A.C.** (AC-866) - Alhambra, CA

4955(e) B&P Code, 1399.455(b) Regulations  
False and misleading advertising claiming his acupuncture treatments could cure diabetes, Parkinson's disease, allergies, arthritis, tennis elbow, drug addiction, migraine, constipation, insomnia, hard of hearing and other disorders.  
Revoked, stayed, one year probation on terms and conditions.  
August 4, 1990

## HEARING AID DISPENSERS DISCIPLINE

**RODRIGUEZ, MANUEL CARLOS, H.A.D.** (HA-1934) - Eureka, CA

1793.02(c) Civil Code. 3401(a)(g)(h)(l) B&P Code  
Gross incompetence, fraud and failure to refund in numerous cases involving the fitting or selling of hearing aids.  
Revoked. Default decision.  
July 30, 1990

## PODIATRISTS DISCIPLINE

**BOORSTIN, HENRY S., D.P.M.** (E-3255) - Brentwood, CA

2236 B&P Code  
Stipulated decision. Conviction for forcible rape, and assault with intent to commit rape, both felonies.  
Revoked.  
August 8, 1990

**KRAFT, JESS, D.P.M.** (E-1770) - Southfield, MI

2305 B&P Code  
Discipline by Michigan Podiatry Board for conviction for mail fraud, distribution of Dilaudid, aiding and abetting distribution of Schedule II controlled substances.  
Revoked by California. No appearance by respondent.  
September 21, 1990

## PSYCHOLOGISTS DISCIPLINE

**BROWN, GAYLIA D., Ph.D.** (PSY-5233) - La Jolla, CA

2960 B&P Code  
Stipulated decision. False claims for psychotherapy to Medi-Cal.  
Revoked, stayed, 5 years probation on terms and conditions.  
July 19, 1990

**BUTZ, THOMAS E., Ph.D.** (PSY-7444) - Santa Cruz, CA

2960(j) B&P Code  
Stipulated decision. Using techniques which placed the patient in psychological danger and rendering devastating psychological consequences to patient.  
Revoked, stayed, 5 years probation on terms and conditions.  
June 7, 1990

**COHEN, ALAN J., Ph.D.** (PSY-2678) - Berkeley, CA

726, 2960(i)(l)(n) B&P Code; 1881(f) Regulations  
Gross negligence in engaging in sexual relations with patient. Also, aided and abetted unlawful practice of psychology.  
Revoked.  
August 26, 1990

**DAVID, MICHAEL K., Ph.D.** (PSY-4293) - Napa, CA

822 B&P Code  
Stipulated decision. Ability to practice impaired by mental illness.  
Revoked, stayed, 3 years probation on terms and conditions, including continuing treatment.  
July 11, 1990

**GROSSMAN, PETER H., Ph.D.** (PSY-3013) - Sunnyside, NY

2960(a)(n) B&P Code  
Conviction for Medi-Cal fraud.  
Revoked. No appearance by respondent.  
July 21, 1990

## RESPIRATORY CARE PRACTITIONERS DISCIPLINE

**ADRIANCE, DENISE L., R.C.P.** (RCP-9053) - Spring Valley, CA

490, 3750, 3750.5 B&P Code  
Conviction for taking part in the sale of 13 pounds of methamphetamine; possession and self use of unlawful drugs.  
Revoked.  
July 28, 1990

**CHAVEZ, MICHAEL S., R.C.P.** (RT-1626) - Lancaster, CA

490, 3750(d) B&P Code  
Convictions for unlawful possession and self use of cocaine.  
Revoked.  
September 5, 1990

**MCBRIDE, SCOTTALYN, R.C.P.** (RM-8066) - El Sobrante, CA

3750(d), (g), (j), 3750.5(b) B&P Code  
Conviction for writing bad checks -- to support heroin habit.  
Revoked. No appearance by respondent.  
July 11, 1990

**ROSENBERG, RONALD L., R.C.P.** (RCP-4693) - Los Angeles, CA

490, 3750(d) B&P Code  
Stipulated decision. Procured license by

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# NEW LAWS WHICH AFFECT PHYSICIANS

By Marcia K. Hope, Legislation Analyst

Each year the Medical Board tracks a large number of legislative bills which affect either physicians, the Board itself, or health care in general. The following bills which became law in 1990 were of particular interest or concern.

**SB 2036, (Senator McCorquodale)** is discussed in the President's column on Page 1. In addition to limiting the ways physicians can advertise their qualifications, it will require the Board to develop a system for evaluating medical specialty boards which are not currently approved by the American Board of Medical Specialties.

**AB 1565 (Assemblyman Sher)** expands the definition of peer review bodies to include the medical or professional staff of a postsurgical recovery care demonstration project.

**AB 3324 (Assemblywoman Hunter)** allows chiropractors to be shareholders, officers, directors or professional employees of certain professional corporations.

*The Department of Health Services is required to produce a patient information summary on treatment options for prostate cancer. ACTION REPORT will print it.*

**AB 3487 (Assemblyman Burton)** requires the Department of Health Services to develop, and the Medical Board to distribute to physicians, a standardized summary of alternative efficacious methods for treating prostate cancer. The bill urges physicians to make the summary available to appropriate patients.

**SB 1802 (Senator Leroy Greene)** authorizes a physician to prescribe or administer controlled substances to a person being treated for intractable pain on an outpatient basis, and prohibits the Medical Board from disciplining the physician for that prescribing.

**SB 1911 (Senator Mello)** specifies that any person who fails to report an instance of elder or dependent adult abuse is guilty of a misdemeanor.

**SB 1930 (Senator Maddy)** requires the Office of Statewide Health Planning and Development to notify the Medical Board any time it suspends or withdraws the approval of a cardiac catheterization pilot program due in whole or in part to acts or omissions by physicians.

**SB 2239 (Senator Doolittle)** permits

physicians to acquire the standardized written summary about blood transfusions from sources other than the Medical Board (see the last issue of **ACTION REPORT**). The original law required physicians to buy the summary from the Board, as opposed to getting a supply printed or photocopied as needed.

**SB 2375 (Senator Presley)** is discussed in the President's Column, Page 1. It makes major changes in how physician discipline is conducted by the Board.

**SB 2426 (Senator Mello)** relates to the notification of physicians when a long-term-care patient has a change in status. It requires the Department of Health Services to define the term "significant sudden or marked adverse change in the patient's condition".

**AB 3272 (Assemblyman Filante)** requires the Board to report to the Legislature by January 1, 1992 on options relating to increasing the amount of post-graduate training which should be required for physician licensure. Also, this bill partially restores the Board's budget, which was withheld by the Legislature in the 1990-91 budget bill, and requires the Board to make reports to the Legislature on investigative case backlogs.

**AB 3910 (Assemblywoman Hansen)** exempts physicians from other states and countries from the licensure requirements if they are practicing in California at the invitation of the U.S. Olympic Committee.

**SB 2388 (Senator Russell)** requires the Division of Licensing to consider including in continuing education requirements for physicians (1) a course in early detection and treatment of certain substance-abusing women, and (2) a course in the special care needs of drug addicted infants; these courses would be targeted at physicians whose practice is of a nature that there is a likelihood of contact with these patients.

**SB 2827 (Senator Roberti)** requires the Division of Licensing, the Board of Pharmacy, and the Board of Psychology to encourage their licensees to take a course in geriatric pharmacology as part of their continuing education.

## NEW ALLIED HEALTH LAWS

The following bills affect allied health

professions under the jurisdiction of the Board:

**AB 2459 (Assemblyman Klehs)** prevents disability insurance policies from prohibiting an insured from selecting a podiatrist as the health care provider to perform a covered service.

**AB 3186 (Filante)** increases the biennial license renewal fee for Hearing Aid Dispensers from \$75 to \$200.

**AB 3256 (Assemblyman Dennis Brown)** expands the powers of the Respiratory Care Examining Committee to recover investigative costs when an Administrative Law Judge includes cost recovery in a judgement against a licensee. The bill also extends two existing provisions relating to unprofessional conduct, and competency examinations to January 1, 1993.

**AB 3627 (Assemblywoman Wright)** creates a three-year authorization for opticians to fit, adjust or dispense eyeglasses (but not contact lenses) in health facilities and in business locations which employ 25 or more people. Current law restricted opticians to working in registered optical shops only.

**AB 3787 (Assemblyman Leslie)** renames the Speech Pathology and Audiology Examining Committee the Speech-Language Pathology and Audiology Examining Committee.

**SB 1916 (Senator Rosenthal)** provides for the sale of hearing aids by catalog or direct mail, provided the seller is a licensed hearing aid dispenser, and meets other provisions.

**SB 2192 (Senator Watson)** creates an advisory committee with the Office of Statewide Health Planning and Development to study the current and potential role of allied health professionals in health care delivery, with an emphasis on medically underserved areas.

**SB 2512 (Senator McCorquodale)** transfers from the Division of Allied Health Professions to the Physical Therapy Examining Committee responsibility to issue, suspend or revoke physical therapist licenses. Also requires the committee to establish and administer a diversion program to rehabilitate physical therapists with substance abuse problems.

**SB 2720 (Senator Watson)** transfers from the Medical Board to the Board of Psychology the authority to issue psychologist licenses, and increases the fee for psychologist license renewal from a maximum of \$150, to a fee of \$225.

fectively provide needed services. The physician should not reveal confidential communications or information without the express consent of the patient unless required to do so by law. [This position, of course, does not have the force or effect of California law, but is illustrative of the standard set forth in Section 2263.]

### Sexual Misconduct

> The commission of any act of sexual abuse, misconduct, or relations with a patient, which is substantially related to the qualifications, functions or duties of the physician constitutes unprofessional conduct and grounds for disciplinary action. Obviously, sexual behavior in a medical setting, such as the office or hospital, or commission of unlawful sexual acts would constitute unprofessional conduct. (Section 726)

> **Provision of specific information to patients who have been the victim of sexual misconduct by a psychotherapist:** Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or other sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient an informational brochure promulgated by the Department of Consumer Affairs which delineates the rights of, and remedies available for the patient.

In addition, the psychotherapist or employer is required to discuss the contents of the brochure with the patient. (Section 728) For additional information about the brochure, contact the Department of Consumer Affairs, Public Affairs and Communications Unit, 1020 N Street, Room 579, Sacramento, CA 95814.

### Fee Splitting

> Several sections of the Business and Professions Code address the issue of fee splitting. Section 650 prohibits "consideration for the referral of patients". Consideration means accepting or soliciting anything of value, whether real or intangible, in return for referring patients to another practitioner.

> Sections 2282 and 2283 prohibit fee splitting among members of hospital medical staffs, and Section 2284 prohibits fee splitting with acupuncturists. Section 2400 permits charitable institutions to employ physicians on salary, provided that the institution does not charge its patients or clients for services.

*Note: The American Medical Association "Principles of Medical Ethics" addresses this issue in Sections 6.04, 6.05 and 6.06: Payment by one physician to another solely for the referral of a patient is fee splitting. A physician may not accept payment of any kind, in any form, tangible or intangible, from any source for referring patients.*

### Ownership of Other Health Providers

> If a physician owns, or has an interest in another health provider, such as a laboratory, physical therapy service, home health agency or other provider, he or she must disclose that ownership or interest to each patient he or she refers to the provider. Also, if the physician bills the patient for services provided by another provider, he or she must disclose that fact to the patient, and must provide an itemized bill showing those services separately. (Sections 654.1 and 654.2)

### SUMMARY

Again, the information contained in this brochure is just a summary of certain of the laws pertaining to unprofessional conduct. The laws themselves are more detailed, and contain provisions not included herein. The Board urges you to become familiar with all the laws relating to the practice of medicine. Finally, there is no substitute for the use of common sense. If a situation that arises raises questions about unprofessional conduct, it is wise to seek counsel and advice before proceeding.

For additional information about the laws pertaining to unprofessional conduct by physicians, you may call the Medical Board's Enforcement Program at (916) 920-6005.

To file a complaint against a physician, call tollfree

1 - 800 - MED - BD - CA  
(1 - 800 - 633 - 2322)

## Physicians, The Law, and Unprofessional Conduct

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OF CALIFORNIA

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Governor  
State and Consumer  
Services Agency  
Department of  
Consumer Affairs

# PHYSICIANS, THE LAW AND UNPROFESSIONAL CONDUCT

Physicians generally are acutely aware of the concept of malpractice or professional liability. However, the term **UNPROFESSIONAL CONDUCT** may not be as clear. Although physicians may think in terms of professional codes of ethics, association bylaws or other rules, they may not be aware that unprofessional conduct is a legal term with serious legal implications.

California's Medical Practice Act [Business and Professions Code, Division 2, Chapter 5] contains many provisions which define unprofessional conduct and provide penalties for violations. The following pages highlight some of the more common violations.

The actual laws are available in a bound volume *Laws Relating to the Practice of Medicine and Surgery...* and may be purchased by sending a check for \$14.30 (postage included) to:

Office of Procurement  
Publications Section  
P. O. Box 1015  
North Highlands, CA 95660

## UNPROFESSIONAL CONDUCT

A general definition of unprofessional conduct appears in B & P Code Section 2234, and includes violating any provision of the Medical Practice Act, including fraud, gross negligence, repeated negligent acts, incompetence, or commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions or duties of a physician and surgeon.\* It also includes any act which would have warranted denial of a license.

### SPECIFIC VIOLATIONS:

#### Inappropriate Prescribing or Treatment

Included in this category of violations are:

- > Self use or abuse of controlled substances without a valid prescription from another physician or without medical cause or reason. (B & P 2239)
- > Use of dangerous drugs (as defined in pharmacy law) or of alcoholic beverages, in a manner which poses a danger to oneself or to patients or others. (B & P 2239)
- > Conviction of a felony, or of more than one misdemeanor charge involving self use of drugs or alcohol. (B & P 2239)

\*In the Business and Professions Code, "physician and surgeon" refers to a medical doctor licensed under this code.

> Prescribing or dispensing drugs without a good faith prior examination and medical indication for the drugs. (B & P 2242)

> Prescribing, dispensing, administering or furnishing drugs to an addict, except in certain specified circumstances. (B & P 2241)

> Repeated acts of clearly excessive prescribing or administering of drugs or treatment; repeated acts of clearly excessive use of diagnostic procedures or diagnostic or treatment facilities, as determined by the standard of the community of licensees (also applies to dentists, podiatrists, psychologists, physical therapists, chiropractors and optometrists). (B & P 725)

> Intoxication to such an extent as to impair the ability to practice medicine safely, while in actual attendance on patients. (B & P 2240)

> Conviction, a guilty plea or a plea of *nolo contendere* on a charge of violating any federal or state law or regulation relating to the regulation of dangerous drugs or controlled substances. The record of the conviction or plea is conclusive evidence of the unprofessional conduct. (B & P 2237)

#### Fraud

> Sale or barter of, or the offer to sell or barter a medical, podiatric, osteopathic, chiropractic or other professional degree, certificate, transcript or other document required for licensure. (B & P 580)

> Unlawful procurement, possession or alteration of a diploma, certificate, transcript or document required for licensure with the intent that it be used to represent

the holder's qualifications for licensure. (B & P 582)

> Use or attempted use of fraudulent documents in connection with the practice of medicine, osteopathy, podiatry, chiropractic or other health profession. (B & P 582)

> Making false statements in affidavits in connection with an application, examination or other purpose. (B & P 583)

> Impersonation of another in obtaining a license certificate, or impersonation of another in an examination, or violating the security of an examination. (B & P 584)

> Violations of the fraud provisions are felonies, punishable by a fine of \$2,000 to \$6,000 or imprisonment in state prison, in addition to other criminal, civil or administrative actions. (B & P 585)

> Aiding or abetting the unlicensed practice of medicine, or practice by a suspended, revoked or unlicensed practitioner. (B & P 2264)

> Professional Confidence: Willful unauthorized violation of professional confidence. [However, the courts have defined a "failure to warn" doctrine if the knowledge imparted by the patient constitutes a clear danger to another person or to the public.] (B & P 2263)

*NOTE: The "Current Opinions of the Council on Ethical and Judicial Affairs" of the Journal of the American Medical Association (1986) states that the information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. The patient should feel free to make a full disclosure of information to the physician in order that the physician may most ef-*

## President's Column

Continued from Page 1

tions. Certainly, no one could anticipate the marked increase in people on Medi-Cal or the increasing complexity of the system. Nevertheless, it appears to me that the Medi-Cal system of reimbursement and authorization has become complicated, unwieldy and unrealistic. It is my opinion that it should be streamlined, made more efficient and come to grips with economic realities.

The bureaucratic intermediaries could be reduced significantly. Perhaps all investigations of alleged program misconduct by Medi-Cal physicians could be handled by the Medical Board of California, thus preventing duplication (Medi-Cal now pays the Department of Justice to do it). The savings could be used to reimburse physicians at a more reasonable level.

In a recent article for *Medical Economics*, it was pointed out that reimbursement to physicians is 6.2% of the entire Medicaid budget. In California, the estimate is 12%. Yet physicians bear the greatest responsibility and risk in the system, including being the subjects of malpractice suits, for what many believe to be a minimal level of compensation.

Maybe some relief could be obtained if malpractice claims filed by Medi-Cal recipients were handled like the Workers' Compensation system. Thus any claims would be defended or paid for through a similar process.

Any effort which successfully encourages physicians to participate in the Medi-Cal program would give patient/consumers better access to a wider variety of physicians. I am convinced that the vast majority of physicians and other health professionals really want to take care of Medi-Cal patients. We should do all pos-

sible to encourage, not discourage them. I believe that the new state administration should promptly and seriously address these problems in order to keep the Medi-Cal program viable.

### THE AIDS CRISIS

Physicians and consumers in California, throughout the United States, and around the world are facing a medical crisis of unprecedented proportions. I speak of the increasing incidence of humans infected with the AIDS, or HIV, virus. The HIV virus cuts across all segments of society. No-one is immune, regardless of gender, sexual orientation, occupation, race, religion, environmental or economic status. At the present time, it appears there is no curative treatment, and the disease is ultimately fatal to all those who contract it. Hopefully, someday there will be a preventive vaccine. Hopefully, someday there will be a specific treatment. At present, these are not available.

It seems to me, therefore, that as with any infectious disease, prevention is the cardinal principle to prevent the spread and arrest this devastating disease. Measures are underway, of course, to educate people as to the transmission of the disease, and how to prevent transmission. However, I do not believe that any of these measures will be completely successful until we have universal testing for the AIDS virus.

I believe that most people are of high ethics and morals and would not willingly transmit the AIDS virus to another human. Of course there will be some exceptions from uncaring or even diabolical people, but I think the good citizens of this state and country would embrace a program that once and for all would let everyone know where they stand. Then they could be much better advised in terms of

Continued, Page 8

### DISCIPLINARY ACTIONS

Continued from Page 3

concealing several convictions for petty theft in license application.

Revoked, stayed, 5 years probation on terms and conditions.

August 6, 1990

#### VANDEN, JOAN L., R.C.P. (RCP-9269)

- Morro Bay, CA

3750(d), 3750.5(a), (b), (c) B&P Code  
Conviction for possession of controlled substances for sale.

Revoked. Default decision.

August 6, 1990

#### WERTZ, DENNIS, R.C.P. (RK-5398) -

Ramona, CA

490, 3750 B&P Code

Conviction for rape by force or fear.

Revoked. Default decision.

August 6, 1990

### SPEECH PATHOLOGIST DISCIPLINE

#### WEBSTER, RICHARD VERNON, S.P.

(SP-496) - Hacienda Heights, CA

2533 B&P Code

Stipulated decision. Conviction for lewd act upon girl under 14. Revoked, stayed, 7 years probation on terms and conditions, including 8 month suspension.

September 17, 1990

### STATEMENT OF ISSUES CASES

#### HEARING AID DISPENSER DECISION

#### SMITH, TERRY ALAN - Lemon Grove, CA

480(a)(3), 3401(i) B&P Code

In Illinois, deceptive advertising practices and using unauthorized employees in hearing aid business.

Application for license is denied.

July 9, 1990

### PSYCHOLOGIST DECISIONS

#### CURIALE, ANGELA M. - Sacramento, CA

2903, 2960(n) B&P Code

Unlicensed practice of psychology. Sex relations with female client.

Application for license is denied.

July 8, 1990

#### MCCANN, JANIS - Santa Monica, CA

480(a) (1), (2), (3), 2960 B&P Code

Conviction for fraudulent insurance claims. Application for psychology assistant registration is denied.

September 10, 1990

## JOHN TSAO, M.D. WINS BOARD GAVEL FOR 1991

In balloting held at the Medical Board's November 16, 1990 meeting in Sacramento, John Tsao, M.D., a Torrance endocrinologist, was elected President for 1991. He will be assisted by Vice President C. Frederick Milkie, M.D., and Jacquelin Trestrail, M.D., Board Secretary. Milkie is an ophthalmologist from Lynwood, and Trestrail practices radiology in San Diego.

### Division Officers Also Picked

The Division of Licensing elected J. Alfred Rider, M.D., as its President. Dr. Rider is a gastroenterologist from San

Francisco. Vice President for the new year will be John Lungren, M.D., a retired surgeon who lives in Sacramento. Division Secretary will be Ms. Audrey Melikian, a former trucking company executive who resides in Fresno.

The 1991 President of Division of Allied Health Professions will be Bruce Hasenkamp, J.D., the Executive Director of the St. Francis Hospital Foundation in San Francisco. Madison Richardson, M.D., a naso-facial surgeon from Los Angeles was elected division Vice President.

Lack of a quorum forced the Division of Medical Quality to postpone electing officers until its February 1991 meeting.

## President's Column

Continued from Page 7

marriage, sexual partners, pregnancy or blood donors. I think it is unfair and dangerous not to protect health professionals who come in contact with potentially infected patients, or patients who come in contact with infected health professionals.

Doctor James Curran of the National Centers for Disease Control in Atlanta has been quoted as saying: "HIV reporting as it exists in the United States is an underutilized tool for AIDS prevention. ... A mandatory reporting system makes all the sense in the world. ... If this were any other disease, there would be mandatory testing." Furthermore, he is reported to have said that he is "very frustrated" by how the medical system handles the HIV threat facing thousands of women and their babies.

Although I believe Doctor Curran was speaking primarily about pregnant women when he made the above remarks, they do seem to fit in with what I have stated in general.

With early detection, it may be possible to institute early ameliorative therapy which may delay the onset of the disease. Furthermore, it would certainly put us in a much better position to plan for the medical care of those who will develop the clinical manifestations of AIDS.

I do not expect everyone to agree with my thoughts. I do, however, want to stimulate those in authority to consider alternatives, to be innovative and imaginative when it comes to solving our health care problems.

I will welcome your opinions, pro or con, on the foregoing. Please feel free to call at (415) 566-5402 or to write to me at 350 Parnassus, Suite 900, San Francisco, CA 94117.

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