



ACTION REPORT

BOARD OF MEDICAL QUALITY ASSURANCE

No. 28—August 1985

MESSAGE TO CALIFORNIA PHYSICIANS FROM THE PRESIDENT OF THE BMQA

Dear Colleagues:

I would like to take this opportunity to inform you about some major activities of the Board. Perhaps the most intense activity confronting us presently is to find an equitable approach to ensure that doctors who received their medical education outside the United States or Canada obtained training equivalent to a U.S. medical education. In the past, we have relied on foreign governments and the World Health Organization for information regarding foreign medical schools. Unfortunately, we have learned this is not always a reliable way to proceed. For that reason, the Board developed new procedures to individually assess the credentials of every foreign-trained physician applying for licensure.

From this review, we found a number of applicants with false credentials as well as a number of unauthorized training programs in California. Immediate action was taken to temporarily disapprove several schools, all of which were in the Caribbean. Three of these schools have since signed stipulated agreements with us which resolve our immediate concerns and lay the groundwork for resolution of any future problems. In

addition, legislative authorization was given for a special investigative team to identify physicians and applicants with fraudulent credentials. As you can see, all of these activities are directed to ensure that the physicians licensed in California have been adequately trained.

Last year, I was honored by being appointed to a newly organized seven-member Commission on Foreign Medical Education of the Federation of State Medical Boards. The Commission is in the process of being approved by the various state boards to act as a fact finding body in obtaining information about foreign medical schools which will then be forwarded to the various boards on request. To date, 53 of the 54 licensing jurisdictions have approved the role of the Commission.

A number of other Board activities will be of high priority in the coming year. We are making some important improvements in the Diversion Program for physicians who are impaired by alcohol or drug abuse. This program places physicians who are judged to be satisfactory candidates for rehabilitation in a supervised program, rather than to suspend

or revoke their licenses. Despite criticisms levelled at it by the Legislative Auditor General for past administrative and recordkeeping flaws, our Diversion Program continues to be one of the best and most innovative in the country. The actions we are taking will maintain its primacy.

On a related matter, a videotape presentation on physician responsibility has been prepared in collaboration with the California Medical Association. This tape is being shown and discussed at MQRC and medical society meetings. It is available for any interested group. The videotape deals in "real life" situations where physicians may have to confront a problem among their colleagues. Comments about the presentation as an educational tool have been quite enthusiastic.

Space does not permit discussion of all the important activities the Board will address in the coming year. The Board would welcome suggestions for improving our functions in maintaining the high standards of medical practice in California.

Lindy F. Kumagi, M.D.

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New Residency Training Requirement for Foreign Medical Graduates

A new regulation became effective in December of 1984 which requires that all foreign medical graduates receive four months experience in general medicine during their year of internship or residency.

As discussed in public hearings held over a year ago, the purpose of this regulation is to ensure that all foreign medical graduates obtain experience in general problems of medicine in a U.S. hospital setting before licensure.

In order to alleviate the administrative burden involved in verifying general medicine experience for all residencies, the Division of Licensing issued instructions to BMQA licensing staff in February on how to apply

this new regulation. These instructions state that in the absence of some indication to the contrary, standard, ACGME-approved residencies in internal medicine, family practice, pediatrics, obstetrics/gynecology, and surgery will be accepted as meeting the regulatory requirement without further documentation.

All other residencies will require some documentation to show that the applicant received four months worth of general medicine experience. This is an expansion of a previous regulatory requirement which mandated general medicine experience only for categorical residencies in pathology, psychiatry and radiology.

CONSULTANT'S CORNER

This space reviews interesting and significant cases which have crossed a BMQA medical consultant's desk, and have resulted in BMQA action against a physician. Names are not used, nor do we identify the physician under discussion.

Please direct all comments to: ANTHONY C. GUALTIERI, M.D., Chief Medical Consultant, BMQA, 1430 Howe Avenue, Sacramento, CA 95825. (916) 920-6393.

Question: What are the most common criminal medical activities that result in jail sentences for doctors?

Answer: 1) fraud; 2) illicit prescribing of controlled drugs.

Admittedly, it is unusual for a physician to be imprisoned for exhibiting criminal behavior in the practice of medicine. Yet each year, from one to two California physicians do end up in prison for the illegal practice of medicine. Several others who are convicted escape jail, but receive criminal probation, penalty fines, and are ordered to make restitution of the money.

Why do well established, often specialty-certified physicians with good reputations, risk professional suicide in this way? There is no simple explanation, but couched somewhere within this aberrant behavior are elements of, at best, impaired judgment and, at worst, greed. Let us look at two cases which illustrate these points.

The first case involved a Board Certified psychiatrist with an excellent professional reputation who was summoned before a

Federal Court on a Grand Jury indictment for 38 felony counts of illegal prescribing, Medi-Cal fraud and mail fraud. The Jury presented findings that this doctor prescribed clearly excessive amounts of Schedule II, III and IV controlled drugs during a four-year time period:

First year	101,000 dosage units
Second year	177,000 dosage units
Third year	184,000 dosage units
Fourth year	126,000 dosage units

The drugs included Amphetamines, Tuinal, Seconal, Quaalude, Codeine Compounds, and Valium.

The Grand Jury also found: "This physician provided little or no psychotherapy to many patients to whom he had given prescriptions, but nevertheless he billed the Medi-Cal program for a 45-minute psychotherapeutic session." Further evidence showed that on ten occasions claims were submitted when the physician was out of state. Over the four year period the Medi-Cal program paid him approximately \$360,000.

In the opinion of the physician expert who reviewed this case, "This physician was flagrantly involved in the sale of prescriptions . . . these prescriptions had no therapeutic function, but were simply illegal orders for abusable or marketable drugs provided by a venal doctor to patients involved in drug abuse."

Moreover, the physician expert reviewer pointed out that this doctor's records consisted solely of an initial diagnosis and a record of prescribing. There was no patient complaint, no history, not even an elementary diagnostic examination. The expert concluded: "This practitioner made only the slightest and clumsiest efforts to prepare for the day that the police were going to arrive."

The doctor pled guilty to five felony counts. These included criminal violations for: 1) distribution of controlled substances not for legitimate medical purpose and not in the usual course of professional practice; 2) filing false and fraudulent claims for reimbursement for services not rendered; 3) mail fraud involving false Medi-Cal claims.

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CHILD ABUSE REPORTING New Requirements for EMPLOYEES of Agencies Required to Report

Under legislation recently passed by Assemblyman Steve Clute, hospitals and other agencies required to report child abuse must meet a new requirement. The employing agency must provide each new employee a form summarizing child abuse reporting requirements. Prior to commencing employment, the new employee must sign a statement that he or she has knowledge of those provisions.

The Board's reading of this law indicates that physicians who are self-employed are not required to complete such forms. However, those physicians who are employed, i.e., in medical schools, government facilities, or by professional medical corporations, appear to be affected by this requirement if employment commences on or after January 1, 1985.

The actual language of the new law states:

"Section 11166 of the Penal Code requires any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects

has been the victim of a child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

'Child care custodian' includes teachers, administrative officers, supervisors of child welfare and attendance, or certified pupil personnel employees of any public or private school; administrators of a public or private day camp; licensed day care workers; administrators of community care facilities licensed to care for children; headstart teachers; licensing workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; and social workers or probation officers.

'Medical practitioner' includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors,

licensed nurses, dental hygienists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

'Nonmedical practitioner' includes state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; marriage, family, or child counselors; and religious practitioners who diagnose, examine or treat children.

The signed statements shall be retained by the employer. The cost of printing, distribution and filing of these statements shall be borne by the employer."

This law does not change the existing requirements for child abuse reporting contained in Section 11166 of the Penal Code.

The provisions of the Penal Code are administered by the Department of Justice, and local law enforcement agencies. For specific guidance as to any responsibilities you may have under this law, we suggest you consult with private legal counsel.

New BMQA Appointments

In March, Governor Deukmejian appointed three new members to BMQA. On June 1st of this year, however, one term on each of our three divisions expired and became vacant August 1.

Richard Andrews

Mr. Andrews has replaced Anne E. Salsbury on the Division of Allied Health Professions. Mr. Andrews received his B.A. degree from Stanford University and his J.D. from the Stanford School of Law. He is currently a partner in a Fresno law firm engaged in general civil practice. In addition to membership in the State Bar of California and the American Bar Association, Mr. Andrews is a member of the National Health Lawyers Association and the California Society for Healthcare Attorneys.



Audrey Melikian

Mrs. Melikian has replaced Florence Stroud, R.N., on the Division of Licensing. Mrs. Melikian is a long time resident of Fresno. She currently owns a trucking company, handles public relations for a rock company, and is a California realtor. She is a member of numerous business, civic, social, and religious organizations. A few of these include Traffic Clubs International; Fresno Board of Realtors; California Association of Realtors; National Board of Realtors; Transportation Advisory Curriculum Committee, Fresno City College; Fresno County Waterworks; Fresno Council of City and County Governments, Streets and Highways; Airway Women's Golf Club; and the Pacific Women's Golf Association.



John W. Simmons

Mr. Simmons has replaced Ben Winters on the Division of Medical Quality. Mr. Simmons received a B.S. degree from Drexel University in 1943. He was Senior Vice President in charge of International Coordination for Atlantic Richfield when he retired in September, 1983. Currently Mr. Simmons is managing partner of a vineyard in Temecula. He is a member of the Boards of Directors of the Los Angeles International Visitors Council, The 25 Year Club of the Petroleum Industry, Verdugo Hills Hospital and Verdugo Hills Hospital Foundation, Western Waste Industry, and the Board of Trustees of Drexel University.



CONSULTANT'S CORNER

(Continued from Page 2)

The Judge sentenced him to three years in federal prison, \$36,000 in fines and ordered him to make restitution of \$30,000. After spending eight months in jail, he was released on a five-year parole program. In a subsequent administrative action, the BMQA revoked his license.

The second case concerns the criminal activities of another Board certified psychiatrist, who developed an "assembly line" practice of treating patients with drug abuse problems. In addition to other patients, he consistently saw from 20 to 40 Medi-Cal patients daily. This high volume of psychiatric patients aroused the suspicions of Medi-Cal investigators and in the end, resulted in formal charges of fraud.

This doctor confronted a jury on charges that, "he willfully intended to defraud, by presenting to the Medi-Cal program false claims for the purpose of obtaining compensation for which he was not legally entitled."

During the trial the District Attorney hammered away at the one key issue in the case: "How could this psychiatrist justify billing 50-minute psychotherapy sessions on 20 to 40 patients in a 24-hour day?"

The jury returned a 15 count felony conviction for Medi-Cal fraud, grand theft, and prescribing to addicts. Soon after the criminal trial, the BMQA revoked this doctor's medical license at an administrative hearing. He spent one year in state prison and had to make restitution of \$90,000 to the Medi-Cal program.

Several years after his release from prison, this physician successfully regained his medical license. At the reinstatement hearing he explained how he had gotten himself into trouble.

"... I rationalized my behavior on the basis that I had developed a superior method with which to treat these individuals. This whole process happened gradually over many months until I had a large practice made up of patients with drug problems ... As my patient load increased I gradually began seeing patients for shorter periods of time. ... Eventually I saw myself as the only physician who could treat this kind of patient in the area and told myself that Medi-Cal should be glad to pay for the help I was giving these patients ... Of course looking back now, there is no question that the pressures and manipulation of these types of patients were enormous and I found myself unable to extricate myself from the situation ..."

DISCIPLINARY ACTIONS

October 1, 1984 to February 28, 1985

Physicians and Surgeons

CHUNG, John K.C., M.D. (G-503)—Costa Mesa

725, 2242, 2238 B&P Code

Stipulated Decision. Prescribing controlled drugs without good faith prior examination and medical indication; excessive prescribing; violation of laws regulating drugs. Revoked, stayed, 7 years probation on terms and conditions, including 6 month actual suspension.
October 19, 1984

COOLS, Sally Marie-Stella, M.D. (G-39309)—Los Angeles

475, 490, 810, 2234(c), 2236, 2261 B&P Code

Dishonesty in filing numerous false claims for anesthesia time and services. Conviction for filing fraudulent claims to insurance companies. Revoked.
December 31, 1984

CURRY, John L., M.D. (G-8975)—Santa Maria

822 B&P Code

Ability to practice safely markedly impaired due to mental or physical illness. No appearance by respondent. Revoked.
October 26, 1984

DeMONTERICE, Anu, M.D. (G-14647)—Cotati

2234(b), (d) B&P Code

Stipulated Decision. Gross negligence and incompetence in seeing patient 15 times over 8 month period for rectal complaints and not detecting rectal cancer later found when patient changed doctors. Penalty in prior unrelated discipline superseded by this order. Revoked, stayed, 10 years probation on terms and conditions.
January 9, 1985

FIORELLA, Edward J., M.D. (A-28005)—Oakland

2236 B&P Code

Stipulated Decision. Conviction for filing false Medi-Cal claims. Revoked, stayed, 5 years probation on terms and conditions.
December 21, 1984

GIFFORD, Loring Arden, M.D. (G-44176)—Lompoc

2236 B&P Code

Federal conviction in Texas for mail fraud and for filing false claims with U.S. Labor Department for medical services to federal employees. Revoked.
January 9, 1985

GROSS, Israel, M.D. (C-37409)—La Jolla

2234(b), (d) B&P Code

Stipulated Decision. Gross negligence and incompetence in failing to initiate proper evaluation and treatment of his patient in distress in the recovery room. Revoked, stayed, 5 years probation on terms and conditions.
November 8, 1984

HALL, Winthrop, Jr., M.D. (C-25895)—Greenbrae

2234 B&P Code

Stipulated Decision. General unprofessional conduct arising out of substandard record keeping practices and business practices, including borrowing money from patient. Revoked, stayed, 5 years probation on terms and conditions.
February 27, 1985

HOLNESS, Herbert, M.D. (A-14785)—San Diego

2237, 2238 B&P Code; 11154, 11210 H&S Code

Stipulated Decision. Federal conviction for unlawful distribution of a controlled substance and for knowingly dispensing a Schedule II controlled substance without a legitimate purpose. Revoked, stayed, 5 years probation on terms and conditions.
December 19, 1984

JAKUBOWSKI, Eugene, M.D. (G-47235)—Ann Arbor, Michigan

2234, 2237 B&P Code

Federal conviction in Michigan for distribution, and aiding and abetting in the distribution, of Preludin, a Schedule II controlled substance. Michigan license suspended by that state. No appearance by respondent. Revoked.
October 8, 1984

JOHNSON, Daniel, M.D. (G-42685)—Rancho Mirage

2264, 3527(e) B&P Code

Aided physician's assistants to practice without a license by permitting each to operate a medical practice in joint ownership with respondent. One year suspension, stayed, one year probation on terms and conditions.
February 11, 1985

JULIANO, August B., M.D. (C-25965)—Ridgewood, New Jersey

2305 B&P Code

Stipulated Decision. Discipline by New Jersey Medical Board for federal conviction for making false and fraudulent statements to gain bank loans. Revoked, stayed, 7 years probation on terms and conditions, including 90 days actual suspension.
October 18, 1984

KINANE, Thomas Joseph, M.D. (G-41190)—Copperstown, New York

2234, 2238 B&P Code

Stipulated Decision. Unlawful possession of controlled substance (Cocaine) outside of the practice of medicine. Revoked, stayed, 5 years probation on terms and conditions.
January 11, 1985

KLAUS, Richard, M.D. (G-12640)—Marietta, Georgia

Stipulated Decision. Voluntary surrender of license.

Accusation dismissed.
February 19, 1985

KRAMER, John Cecil, M.D. (G-3620)—Irvine

820, 822 B&P Code

Ability to practice safely impaired by mental illness. No appearance by respondent. Revoked.
February 28, 1985

LEE, David, M.D. (A-27372)—South Pasadena

Violation of probation of prior decision. No appearance by respondent.

Revoked.
February 25, 1985

LIN, Yeong Ping, M.D. (A-30517)—Oakland

2234(b) B&P Code

Gross negligence in management of patient later found to have rectal carcinoma. Revoked, stayed, 5 years probation on terms and conditions.
November 1, 1984

LOMAGLIO, Michael I., M.D. (A-34555)—Gardena

2234, 2237 B&P Code

Stipulated Decision. Conviction for prescribing controlled substance to person not under respondent's treatment for any pathology or condition. Revoked, stayed, 5 years probation on terms and conditions.
November 16, 1984

LUND, Anthony J., M.D. (C-19044)—Saratoga

Stipulated Decision. Voluntary Surrender of license.

Accusation dismissed.
November 6, 1984

MARSH, Wallace Stanley, M.D. (C-33991)—Lompoc

2238 B&P Code; 11190, 11191 H&S Code

After placed on notice, continued to disregard drug statutes requiring the maintaining of accurate records of dispensing and administering Schedule II controlled substances. Revoked, stayed, 2 years probation on terms and conditions.
December 19, 1984

MAURITZEN, Joseph H., M.D. (G-9952)—Livermore

2234, 2261 B&P Code

Knowingly signed certificates directly related to the practice of medicine which falsely represented the existence of a state of facts, although no fraud or dishonesty was involved. Public reproof.
February 11, 1985

MECOLI, Francis, M.D. (A-29033)—Reseda

822, 725, 2239, 2238 B&P Code; 111350 H&S Code

Excessive prescribing of narcotics to patients, some portions being diverted for his own use as an addict to Heroin, Dilaudid and Cocaine, which impairs his ability to practice medicine safely. Revoked.
December 10, 1984

MORGAN, Sherard Y., M.D. (A-32931)—Inglewood

490, 2239(e), 2236, 2237, 2238, 2239 B&P Code

Conviction for obtaining Cocaine by misrepresentation and for self-administration. Revoked, stayed, 7 years probation on terms and conditions, including 90 days actual suspension.
December 20, 1984

MOTAMED, Michael M., (C-37397)—Los Angeles

490, 2237, 2234(a) B&P Code

Stipulated Decision. Gross negligence and incompetence in failing to appreciate and act upon the demonstrated symptoms indicative of a major abdominal catastrophe, post-operative of a repeat cesarean section. Also, federal conviction for conspiracy to distribute Heroin. Revoked, stayed, 5 years probation on terms and conditions.
October 12, 1984

NEWPORT, Robert R., M.D. (A-22211)—Ben Lomond

2236 B&P Code

Stipulated Decision. Conviction for Medi-Cal fraud. Revoked, stayed, 7 years probation on terms and conditions.
December 19, 1984

NICHOLS, Mike, M.D. (G-49792)—Marysville

2234(b), (c) B&P Code

Repeated similar negligent acts and one finding of gross negligence in performing sports physical examinations on high school female students. Suspensions totalling 345 days, stayed, 3 years probation on terms and conditions.
December 20, 1984

REPAIRE, John R., M.D. (C-25189)—San Diego

2234(b), (d) B&P Code

Stipulated Decision. Gross negligence and incompetence in the treatment and care of mother and infant in a home delivery. Prior discipline involved home delivery. Revoked, stayed, 5 years probation on terms and conditions.
November 2, 1984

ROBERTS, Howard G., M.D. (A-11460)—Walla Walla, WA

2305 B&P Code

Loss of license with Washington State Board. No appearance by respondent. Revoked.
February 28, 1985

SCHWERTFEGER, Harry Don, M.D. (C-26129)—San Diego

2271, 17500 B&P Code

False and misleading advertising on a national scale promoting the sale of his weight loss product called the "Diet Bullets." Revoked, stayed, 5 years probation on terms and conditions, including 90 days actual suspension.
January 15, 1985
Judicial review recently completed.

SCOTT, Harry Wayne, M.D. (A-13536)—San Bernardino

2234(b) B&P Code

As forensic pathologist for county coroner, performed autopsies in a grossly negligent manner and testified inaccurately in court on those incorrect autopsies. Revoked, stayed, 3 years probation on terms and conditions.
November 22, 1984

SHUMATE, Lincoln W., M.D. (C-8720)—Fullerton

725, 2234(b), (d) B&P Code

Stipulated Decision. Clearly excessive prescribing of controlled substances to numerous patients without legitimate medical indications, and failure to maintain patient records, constituting gross negligence and incompetence. Revoked, stayed, 10 years probation on terms and conditions, including 1 year actual suspension.
October 26, 1984

SOMERS, Lowell M., M.D. (A-22923)—Indio

Stipulated Decision. Violation of probation under prior discipline.

Revoked, stayed, 10 years probation on terms and conditions.
November 2, 1984

TUCK, Marshall S., M.D. (G-44656)—Carson

490, 2305 B&P Code

Falsified license application by not revealing a federal conviction. Also, Connecticut license revoked by that state for violation of statutes regulating drugs. Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
November 14, 1984

WYATT, Vell R., M.D. (A-16667)—San Diego

2236(a), (b) B&P Code

Federal conviction for conspiracy to distribute controlled substances, and other counts, resulting in jail term. Revoked, stayed, 10 years probation on terms and conditions.
October 29, 1984

YEH, Owen Yun-Ying, M.D. (A-19917)—Salinas
Failed to satisfy a condition of probation required under prior discipline.
Revoked, stayed, 10 years probation on terms and conditions.
November 19, 1984
Judicial review recently completed

Podiatrists

WEBER, Bennie B., D.P.M. (E-1441)—Lodi
725, 2234(b), (c) & (d) B&P Code
Stipulated Decision. Charged with gross negligence, repeated similar negligent acts, incompetence, and excessive treatment in the care of many patients with foot problems. Respondent admits no specific allegations but does stipulate that a factual basis in part exists for the following order.
Revoked, stayed, 5 years probation on terms and conditions, including 60 days actual suspension.
March 30, 1985

AGENT ORANGE REMINDER

In the January 1985 *Action Report* we included an article on military and civilian victims of agent orange herbicide exposure in Southeast Asia. This note is a reminder that the California Department of Veterans Affairs provides referrals and assistance for veterans who may have been exposed. For information about medical examinations and other services veterans may contact:

Department of Veterans Affairs
Veteran Services
P.O. Box 1559
Sacramento, CA 95807
(916) 445-2334

BMQA WILL NO LONGER REQUIRE CPR FOR PHYSICIAN LICENSE RENEWAL

On January 25, 1985, the BMQA Division of Licensing voted to repeal the regulation requiring physicians to possess a current cardiopulmonary resuscitation (CPR) card to renew their licenses.

CPR has been a controversial issue since it first was mandated in 1980. Opponents of the requirement argued there were not enough training programs available; that performing CPR could be dangerous for certain less-than-robust doctors; that some specialties virtually never encounter cardiac emergencies; and, that physicians who need to know CPR will acquire considerably more training than is offered in the basic courses given to the general public.

However, there was considerable public concern that doctors should be able to perform this critical emergency procedure. The original regulation was later amended to provide exemptions for health problems, and to approve additional providers of training.

The State Department of Health Services has released a new publication entitled "Health Effects of Toxic Substances in the Environment, a Directory of References and Resources."

The publication is designed to help the public, health professionals and government agencies locate health information and assistance on toxic substances such as chemical contaminants in air and water, hazardous wastes and harmful chemicals in the workplace.

The directory lists books, articles and computerized data bases, as well as government and private agencies that deal in some way with toxic substances, listing their addresses, phone numbers and descriptions. Former State Health Director Peter Rank commented, "By compiling in one publication references on a wide range of environmental contaminants, this directory should be extremely useful in guiding users to up-to-date information on the health effects of toxic substances, and it will give readers a clear picture of the many different agencies that can provide assistance in this area of public concern."

The directory was prepared by the Community Toxicology Unit (COMTU) in

the Department's Epidemiological Studies Section. COMTU assists other government agencies by evaluating health effects of toxic substances that may impact the health of Californians.

Richard J. Jackson, M.D., Chief of COMTU, said references in the directory have been chosen for accessibility and reliability. Annotations have been added for those books that are considered the best reference works for a basic library.

Descriptions of the more than 50 public and private agencies listed will help readers identify those which may be of greatest assistance in specific instances.

Emergency phone numbers are listed in the front of the directory. These include those for the new State-funded Toxic-Info Center at San Francisco General Hospital (800-233-3360, toll-free in California, or 415-821-5338 in the San Francisco Bay Area), which can help with any questions regarding acute effects of toxic substances.

Copies of the 83-page directory may be purchased for \$4.35 each from the California Department of General Services, Publications Section, P.O. Box 1015, North Highlands, CA 95660. (Request publication 7540-958-1300-3.) (The \$4.35 price includes postage and handling.)

Resolution on Physician Assistants

Following a special meeting on Physician Assistant issues in April of this year, the Board's Division of Allied Health Professions adopted the following resolution:

- I. The Division of Allied Health Professions appreciates the considerable amount of testimony it received concerning the current and future training and role of the Physician Assistant;
- II. The Division, in reviewing the testimony and considering policy options affecting PAs will confer with the Physician Assistant Examining Committee, and will advise interested Legislators;
- III. The Division will, as we have done in the past, cooperate with the PA Committee in order to work jointly to maintain and improve the quality of care in the health delivery system; and also reaffirms its support of the PA as a valuable and permanent participant in the health care of Californians.

Court Bars Chiropractor From Colonic Irrigation

After extensive litigation and a lengthy hearing that found two state licensing boards on opposite sides of the fence, a Superior Court judge in San Diego recently ruled that colonic irrigation is an invasive medical procedure that may not be performed by chiropractors.

On June 27, 1985, Superior Court Judge Carlos A. Cazares issued a judgment permanently restraining and enjoining John Luly, D.C., a San Diego chiropractor, from advertising or performing colonic irrigations.

The court ruled that "colonic irrigation is a treatment procedure which requires entry into the body with a device for treatment of the colon, and the use or administration of a colonic irrigation is the practice of medicine," and is outside the scope of chiropractic practice.

Colonic irrigation involves treatment of the colon, the large intestine, and has been used to relieve constipation.

About seven years ago, Luly commenced an advertising campaign for his chiropractic practice to perform colonic irrigations. He was requested to stop by the Board of Medical Quality Assurance (BMQA). BMQA's desist request was based on a published state Attorney General opinion concluding that it was unlawful for chiropractors to advertise or perform colonic irrigations.

Luly rebuffed BMQA's request. His licensing agency, the Board of Chiropractic Examiners, has never agreed with that

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Health Facilities Disciplinary Reports—A Reminder

Section 805 of the Business and Professions Code mandates that the chief administrator or executive officer and the chief of the medical staff of any hospital, nursing facility, health care service plan, or medical care foundation are required to report to the appropriate licensing Board when any licensed physician and surgeon, clinical psychologist, dentist, or podiatrist is denied staff privileges, removed from the medical staff, or has staff privileges restricted for a cumulative total of 45 days in any calendar year, for any medical disciplinary cause or reason.

Examples of medical cause or reason include any of the following: 1) negligent or incompetent care, 2) practicing while mentally impaired or under the influence of alcohol and/or drugs, 3) acts of commission or omission by physicians which endanger patients, 4) sexual misconduct toward patients.

Staff privileges are restricted when the restriction is imposed by formal action of the hospital *executive committee*. Examples of these are: 1) mandatory consultations, 2) mandatory proctoring, 3) elimination of previously performed procedures, 4) prohibition from previous privileges to admit patients to intensive care or coronary units.

The law requires the report to contain the signatures of both the Chief Executive Officer and the Chief of the Medical Staff. Misdemeanor penalties may be assessed for both the Chief Executive Officer and the Chief of the Medical Staff if a report is not made. Failure to report is punishable by a fine of up to \$600.00. The report must contain "a detailed description of the cause(s) for the . . . action, including all the reasons for and

circumstances surrounding the action and must be filed with the BMQA within 20 working days." Providing this information does *not* constitute a waiver of confidentiality of medical records and committee reports.

Under the law, hospitals and other health facilities, are required to ask BMQA if a Health Facilities Reporting Form has been filed prior to granting or renewing staff privileges of physicians, podiatrists or clinical psychologists. BMQA is required to provide the requesting institution with a copy of a report if it has been made for any reason other than incomplete medical records. However, the 805 report is not a public record. It is only available to requesting hospitals. If BMQA does not respond within 30 working days, the hospital may grant or renew staff privileges. Decisions regarding staff privileges remain entirely at the discretion of the institution. The law only requires that information from BMQA regarding reports from other facilities be obtained before a final decision is made. Failure by a health facility to request such information is a misdemeanor.

Some chiefs of staff have asked us if this law applies when physicians are put on various types of proctoring restrictions under hospital medical staff by-laws provisions which do not arise out of any specific patient care problem or medical disciplinary cause. An example would be a by-law which requires that a physician be proctored in a type of surgery if he has not performed a minimum number of those surgeries during the prior year. These types of proctoring requirements which do not arise out of any specific medical disciplinary cause or reason are exempt from reporting under the law.

CHILD ABUSE AND A PHYSICIAN'S RESPONSIBILITY

(Please see companion article on page 2 regarding new reporting requirements for employees of health facilities)

A recent report (April 1985) from Attorney General John K. Van de Kamp's Commission on the Enforcement of Child Abuse Laws helps to clarify a physician's understanding and responsibility with regard to California's Child Abuse Reporting Law.

WHAT CONSTITUTES CHILD ABUSE?

Physical Abuse—Willful infliction upon any child of a cruel and inhuman corporal punishment or injury. Examples might be head injuries, burns, fractures, bruises from whipping or pummeling, injuries unexplained or inconsistent with explanation.

Sexual Abuse—Such as sexual assault by rape, incest, sodomy, lewd or lascivious acts upon a child under 14 years of age, oral copulation, penetration of a genital or anal opening by a foreign object, child molestation, or exploitation by employing a

minor to perform obscene acts. Be suspicious if there are signs of pregnancy or venereal diseases of the eyes, mouth or genitals of a child, or evidence of semen.

Physical Neglect—Failure to provide adequate food, clothing, shelter or medical care. This may result in conditions of severe malnutrition or medically diagnosed nonorganic failure to thrive.

Institutional Abuse—Any type of abuse which occurs in out-of-home care.

Severe Emotional Abuse—Any abuse which takes the form of willful cruelty where health is endangered.

WHO MUST REPORT CHILD ABUSE?

Penal Code Section 11166(a) provides, in part:

" . . . any child care custodian, medical practitioner, nonmedical practitioner,

or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident."

The Child Abuse Reporting Law overrides the physician-patient privileges and the psychotherapist-patient privileges. Physicians may also take skeletal x-rays of a child for the

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Podiatrists Also Subject To New Competency Exam Law

The January *Action Report* outlined a new law which allows the Board to administer competency examinations to physicians suspected of unsafe or incompetent practice. That article neglected to point out that licensed podiatrists also are subject to SB 109.

In brief, if the Podiatry Examining Committee finds there is reasonable cause to doubt a podiatrist's competence to practice, the committee can file a petition to compel an examination.

Copies of the January article, the law itself, and additional information are available from the Podiatry Examining Committee, 1430 Howe Avenue, Sacramento, CA 95825. Phone (916) 920-6347.

COLONIC IRRIGATION

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Attorney General opinion, contending that colonic irrigation has always been a traditional part of chiropractic practice from the very beginning.

"We accepted the challenge and filed suit against Dr. Luly to enjoin the breaking of the law," said Ken Wagstaff, Executive Director for BMQA.

The Chiropractic Board immediately intervened into the litigation in support of the chiropractor's position.

After years of legal proceedings, the case of BMQA vs. Luly finally came for hearing before Judge Cazares of the San Diego Superior Court. Judge Cazares ruled in favor of BMQA and against Luly and the Chiropractic Board.

Further disagreement developed in the drafting of court's judgment. Over the strenuous resistance of the Chiropractic Board, Judge Cazares included in his judgment a legal ruling stating that "the use or administration of a colonic irrigation does not constitute the authorized practice of Chiropractic" as defined by law.

"The significance of this ruling," explained Vern Leeper, Chief of Enforcement for BMQA, "is that the Chiropractic Board, being a party to this suit as an intervenor, is bound by the judgment. It seems they are obligated to inform their chiropractors that performing colonics is illegal as a matter of court law."

Deputy Attorney General Barry Ladendorf, who represented BMQA in the case, said that Luly's attorney indicated to him that Dr. Luly will not appeal. Ladendorf said he was uncertain of the Chiropractic Board's position on the question of appeal.

CHILD ABUSE

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purpose of diagnosing possible child abuse without the consent of the child's parent or guardian.

WHAT IS THE LIABILITY OF PERSONS REQUIRED TO REPORT?

Penal Code Section 11172(b) states, in pertinent part:

"Any (person required to report) who fails to report an instance of child abuse which he or she knows to exist or reasonably should know to exist, . . . is guilty of a misdemeanor and is punishable by confinement in jail for a term not to exceed six months or by a fine of not more than one thousand dollars (\$1,000) or by both."

Failure to report suspected child abuse may result in civil liability as well. A person required to report suspected abuse who fails to do so may be held liable in civil damages for any subsequent injury to the child. (*Landeros vs. Flood* (1976) 17 Cal.3d 399.)

A conviction may expose a physician to licensure discipline for unprofessional conduct.

WHERE DO I REPORT CHILD ABUSE?

The reporting person must immediately telephone the report to a child protective agency of his or her choice (i.e., police or sheriff's department, a county probation department or a county welfare department), and then send a written report within 36 clock hours to the agency selected. Telephone reports must include the name of the person making the report, the present location of the child, the nature and extent of the injury, and any other information requested by the child protective agency, including the information that led the reporter to suspect child abuse. Confidentiality regarding the identity of the reporter is strictly maintained.

Reports must be made on Department of Justice Form SS8572 (Suspected Child Abuse). For medical practitioners, Department of Justice Form 900 (Medical Report—Suspected Child Abuse) must be completed as well. If these forms are needed for your hospital or office, they can be obtained from a child protective agency.

WHAT ABOUT REPORTING CONSENSUAL SEX?

On June 1, 1984, the Attorney General issued an opinion interpreting the Child Abuse Reporting Law. This opinion was written in response to the following question:

Is a medical practitioner, as defined in the Child Abuse Reporting Law, required by that law to make a report to a child protective agency when a minor receives medical attention for a sexually transmitted disease, for birth control, for pregnancy or for abortion?

The opinion states that cases involving minors fourteen or older must be reported *only if* there is a reasonable suspicion that the sexual contact was the result of child abuse; that is, that the girl or boy has been the victim of non-consensual, abusive sexual assault or molestation.

However, a girl or boy under fourteen years of age is presumed unable to consent to sexual activity. Therefore, *all* sexual contact involving a person under fourteen years of age violates the law. The Child Abuse Reporting Law requires the reporting of all instances in which there is reasonable suspicion that a girl or boy under fourteen has been involved in sexual conduct, or has a sexually transmitted disease. This includes all girls who become pregnant or are aborted. Requests for birth control pills or devices does not necessarily indicate sexual activity and therefore need not be reported.

Opticians Must Refer Contact Lens Patients Back to Prescriber

Under a 1984 law, registered dispensing opticians who fit contact lenses are required to refer each patient back to the prescribing doctor within 60 days of completing a fitting. Existing law prohibits RDOs from fitting or dispensing CLs without a current prescription which specifies or "OK's" contact lenses, issued by a licensed physician or optometrist. The 1984 amendments also require RDOs who fit CLs to pass a national examination and obtain a separate Contact Lens

Dispenser license from the Board.

For the well-being of your patients the Board urges that you remind CL patients of the importance of professional follow-up after fitting by an optician. For additional information contact:

Registered Dispensing Optician
Program
1430 Howe Avenue
Sacramento, CA 95825
(916) 924-2612

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1430 HOWE AVENUE
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