

# C A P P

## CALIFORNIA ASSOCIATION OF PSYCHOLOGY PROVIDERS

SUMMER 2007

PRESIDENT'S COLUMN	JAY SLOSAR, Ph.D., CAPP PRESIDENT
<p>Welcome to our June, 2007 newsletter and updates about what we are doing at CAPP. Since our last newsletter CAPP has affiliated with NAPPP, The National Association of Professional Psychology Providers (pages 6-7). We also now have our web site which can be accessed directly at <a href="http://capp.nappp.org">http://capp.nappp.org</a>. On this site you will have access to CAPP activities, newsletters and historical information about the CAPP v RANK legal victory which started the organization. CAPP has continued to fight for Psychologists' rights in the hospital setting and in other legal areas. We encourage you also to join NAPPP, and consider how joining both benefits all Professional Psychology Providers. The membership form at the end of this newsletter outlines the details of the shared mutual affiliation of CAPP and NAPPP. Note that if you join NAPPP, your CAPP membership is free.</p> <p>This issue describes current issues going on and CAPP's response. Hawaii has passed a prescription privilege bill for Psychologists. That's the good news. The bad news was that the Governor said she would veto that bill. CAPP has made a financial contribution and written a detailed letter to Governor Lingle in Hawaii. (See inside for this letter.) The letter has been widely praised by several advocacy groups. Legislation in California is stalled, but CAPP will continue to actively pursue prescription privileges for Psychologists in our state.</p>	<p>There are dramatic changes in store for healthcare delivery, and CAPP and NAPPP will be valuable sources for keeping you up to date. Many proposals are in play for changing the dynamics of healthcare delivery and financing, from the Governor to legislators to business groups.</p> <p>Many states themselves have also tried to tackle the problem with their own solutions. CAPP intends to continue to advocate for economic parity and fairness in any plan that affects how psychologists are reimbursed. As you know, psychologists continue to be reimbursed at 1980 levels for more and better clinical services.</p> <p>I want to thank Steve Berger for again putting together a quality newsletter with depth. He has obtained articles from NAPPP and from Dr. Patrick Deleon who once again honors us with an original contribution (pages 4-5). You can also read our letter to the Governor of Hawaii (pages 2-3) urging the Governor to sign the law permitting properly trained psychologists prescribe psychotropic medications for their patients who have desperate need for those services.</p> <p>By all means if you want to become more active in CAPP, please let us know. Your continued support is greatly appreciated.</p>



MAY 27, 2007

The Honorable Linda Lingle  
Governor, State of Hawaii  
Executive Chambers, State Capitol  
Honolulu, Hawaii 96813

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Andrew Schwartz, Ph.D.  
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Dear Governor Lingle:

I am writing to you on behalf of the Board and Members of the California Association of Psychology Providers (CAPP). We are a state-wide psychology association composed of California licensed psychologists. We are probably most well known for our victory at the California Supreme Court (*CAPP v. Rank*) in which we protected the right of the public to the independent services of Clinical Psychologists in hospital settings.

We are writing to you to urge that you sign Hawaii bill SB1004. The bill will assure the people of Hawaii can have access to the prescribing services of qualified psychologists. These are Hawaii psychologists, who have their Psychology Doctorate and Hawaii license. At their own personal expense, they have voluntarily obtained the additional education and training that will enable them to better care for the psychological needs of their patients.

We are aware that a communication has been sent to you by a self-described “diverse group of clinical psychologists who urge you to veto SB 1004.” We deplore the fact that this self-anointed group, who do not have accomplishments as a group, resorted to distortions and misrepresentations in their communication to you. However, this is not a surprise to CAPP - we have experienced this disingenuous behavior used against us. We had to submit brief after brief to the Courts to counter these tactics (*CAPP v. Rank*). Sadly, it wasn’t until 1990 that the California Supreme Court could affirm the Legislature’s 1978 law (Health and Safety Code Section 1316.5) declaring Psychology an independent health profession and explicitly authorizing qualified California Clinical Psychologists to independently treat our patients in hospitals. Yet, we still have California State employee medical doctors refusing to implement and obey the law!

We are confident that you will receive multiple letters from responsible psychologists and psychology associations refuting the misrepresentations of this “diverse group of clinical psychologists” whose true motivation, fears and self-interest remain unknown. Sadly, this is not new in our profession. In the 1930s and ‘40s some did not want clinical psychologists to independently administer and interpret psychological tests. In the 1950s and ‘60s there were those who did not want clinical psychologists to independently conduct psychotherapy. In the 1960’s there were those who asserted that clinical psychologists should not be permitted to testify in court as expert witnesses as to a person’s mental illness diagnosis. In the 1960s and

70's, there were those who did not want psychologists to be licensed by the State as an independent profession, and in the 1980's and 90s there were those who claimed clinical psychologists were not competent to independently treat our patients in hospitals. Now we have the situation where specially trained psychologists prescribing is being resisted. There is nothing new about these kinds of misguided, misinformed and distorted set of arguments.

Because of CAPP's unique experience in dealing with these tactics, we will pick out just two for analysis. First, the "diverse group" references that the General Accounting Office found that the Department of Defense "PDP" program was not "cost-effective." By itself, that is a correct quote. However, the "PDP" program is best thought of as a "Research and Development" program. Using the logic of this "diverse group of clinical psychologists" we would not have the stealth bomber (or any new technology or medications) because the research and development costs are huge. However, the actual costs of such things as production of new technology, production of new medications, or producing psychologists competent to prescribe is miniscule in comparison to the research and development costs. In addition, the cost-effectiveness analysis of the PDP program does not even apply in any respect to this situation because the State of Hawaii is not being asked to bear the cost of training these psychologists. The Hawaii psychologists, and psychologists across the United States, bear the costs themselves.

Second, this "diverse group" asserts: that the education and training of the Hawaii clinical psychologists is inadequate, that the training is deficient in terms of the training received by the PDP psychologists, that these psychologists are an "unnecessary risk to both patient care and the integrity of clinical psychology," and that allowing these psychologists to prescribe is an "experiment, the results of which may not be known for many years". Fortunately, this mixture of theory, conjecture and misrepresentation has actually been tested and proven false. The PDP psychologists have testified that the training that clinical psychologists need to prescribe safely and effectively is the kind provided for in SB1004. Also, the amount of "training" varied from year to year in the PDP program - always moving in the direction of progressively shortening the program to an effective and more cost-efficient one than the PDP program was in its first year. In addition, we now have several years of experience with 2 different states (Louisiana and New Mexico) showing us that clinical psychologists with less requirements than SB 1004 are prescribing safely and effectively, and that the "integrity of clinical psychology" has not been affected. The same is true of the PDP clinical psychologists who completed the longest and most extensive training version of the PDP: they remain first and foremost clinical psychologists and have not gone over to the dark side and become junior psychiatrists forsaking psychology.

Should you desire any further insight into the tactics of misrepresentation that these psychologists have injected into the serious matter of expanding the assistance available to Hawaii's citizens for their mental health needs, please feel free to call on us.

Respectfully,

Jay Slosar, Ph.D., President  
Rosalyn Laudati, Ph.D.  
Andrew Schwartz, Ph.D.  
Stephen E. Berger, Ph.D., ABPP

[Ed. Note: On this page, CAPP is honored to publish to you, an article written especially for this issue of the *CAPP BULLETIN* by former APA President, Patrick DeLeon, Ph.D., J.D. Dr. DeLeon, truly one of the great leaders and visionaries in our profession, and CAPP is deeply honored that once again he has provided CAPP with an original article for the *CAPP BULLETIN*.]

## MOVING FORWARD, WHILE APPRECIATING THE PAST

Pat DeLeon, Ph.D., J.D.

CAPP long ago learned that to be successful in the public policy (i.e., political) process, one must have vision, presence, and persistence. You have been successful over the years because you have appreciated the importance of controlling our own professional destiny. Steve Bucky invited me to be this year's commencement speaker at the graduation ceremonies of Alliant International University, San Diego. The underlying theme of my remarks was that psychology was facing unprecedented change as we enter the 21<sup>st</sup> century and that the soon-to-be graduates were well prepared for the challenges of the future, especially if they accepted their responsibility to address society's pressing needs. I very much appreciated this kind invitation. It provided an opportunity to reflect upon how difficult it is for many of our colleagues to think outside of their traditional "silos" and instead, to actively position our profession to serve the educated consumers of the future and to affirmatively embrace technology's potential.

As we await the Governor's decision as to whether to sign or veto the Hawaii prescriptive authority (RxP) bill, there can be no question that HPA President Robin Miyamoto, Native Hawaiian psychologist Jill Oliveira, and their colleagues have already made a major contribution to our profession's future. During the closing hours of the legislature, and now during the signature decision time, psychology has an almost daily presence in the media. Access to necessary quality care vs. maintaining the traditional "silo"-oriented status quo are the underlying policy themes being debated. Regardless of the Governor's decision, next session there will undoubtedly be additional legislative action, perhaps this time driven by our public service colleagues (i.e., those in the state's mental health and prison systems) appreciating that they must possess this clinical authority in order to best serve their beneficiaries. We are all aware of the recent travel by an American citizen who was infected with a serious, and potentially highly infectious, form of tuberculosis (TB). Before the U.S. Senate Appropriations Committee: "No matter how informed or how prepared we think we are, like many of you, I was caught off guard by last week's news of an individual – an American, no less – who traveled around the world and back with a highly dangerous form of tuberculosis. As we have seen in the media and heard from public officials, there were a number of missed opportunities along this man's itinerary that could have caused serious harm to others. We dodged a bullet on this one.... As this case could certainly be considered one of national security, let me assure you, there is no border control possible that will stop infectious diseases from entering our country. We must address infectious health threats at their origin as well as our borders and across our states.... Although TB is no longer considered to be a major public health threat in the U.S., it still infected almost 14,000 people in 2006. This is only a fraction of the global TB burden which is characterized by nearly nine million new active cases each year and two million deaths. Eighty percent of active TB cases are concentrated in only 22 countries...."

Psychology must appreciate, as one of our profession's leading health experts recently noted: "The case of the patient with TB clearly shows that the communication of risk to patients and patients' perceptions of those risks influence behavior. This sort of event could lead to tons of funding to address multi-drug resistant strains for the biomedical community. Where is the outcry that we need to fund research on the ways in which patient behavior is important... the ways in which risk can be effectively communicated to patients... more effective ways to use communication technology. The public health can't be protected effectively by drugs alone or by barriers – like fences – we need to understand people's behavior. We need research on effective risk communication.... This could be one of 1000 teaching moments." An outstanding point. Where is psychology's voice? Are we educating the public and national health policy experts?

Rodney Baker recently edited a fascinating book, Stories From VA Psychology, detailing the contributions of a number of our profession's unsung heroes – their battles with medicine and academic psychology – in their successful quest to establish an independent, highly respected VA psychology corps over a quarter of a century. Their challenges were many and their fearless leadership could well have cost their professional jobs. Change is always unsettling for many, especially those allegedly "in power." CAPP has a long and distinguished history personified by: "To dream the impossible dream.... To run where the brave dare not go.... To reach the unreachable star...." I sincerely hope that CAPP will once again take on the quest – this time, obtaining prescriptive authority for California's public sector colleagues. "And the world will be better for this...." Aloha.

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[Ed. Note: In the last month, a request was posted on an APA list serve from a psychologist in a mid-west state. She indicated that her hospital was open to the idea of hospital privileges for psychologists but she needed material to make the "case." This situation came to the attention of CAPP and within a couple of days we delivered to her a packet of materials that she acknowledged were what she needed. We also got her connected with the APA Practice Directorate. You can understand that at the moment it is not prudent for us to provide any further details of names and locations. We will keep you up-dated.

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[Ed. Note: Last year, the CAPP Board decided to join an alliance with the National Alliance of Professional Psychology Providers (NAPPP). We have already worked with NAPPP on a prescription privileges bill in California for psychologists. CAPP looks forward to working on a number of joint projects with NAPPP in the future. The importance and value of joining NAPPP can be found in an article by APA Past President and NAPPP founder, Dr. Nick Cummings.]

### **Why I Joined the NAPPP**

**Nick Cummings, Ph.D., Sc.D. (Past President, APA)**

Why would a former president of the APA, now well into his octogenarian years, and who could be resting on his laurels join a new activist organization like NAPPP? Why after nearly six decades as a psychologist when he has the health and means to just enjoy life would he still be fighting for psychology. The answer is simple: the profession I love is once again in trouble. Practices are languishing and a malaise has swept over our colleagues. We are in a deep hole and the harder we dig the deeper it gets. We need a fresh, new perspective.

I entered private practice in 1948 during an era when there was no licensure, malpractice insurance or societal recognition of psychology as a profession. For the handful of us who took this bold step it was scary and lonely. We looked to the APA for help to obtain licensure and malpractice insurance, but got a hostile response as our national organization was deeply opposed to the idea of private practice for its members. In desperation we formed the Dirty Dozen, fourteen pioneer activist practitioners who risked everything in a thirty year struggle for professionalism (see R.H. Wright and N.A. Cummings (2001), *The Practice of Psychology: The Battle for Professionalism*. Phoenix, AZ: Zeig, Tucker and Theisen). We obtained licensure, malpractice insurance and societal recognition of psychology, but it was a mighty struggle.

The battle was fierce, and one example will have to suffice. In 1965 the Dirty Dozen obtained a twelfth hour reprieve from Health, Education and Welfare Department Secretary Joseph Califano, a remarkably sympathetic and responsive cabinet member originally appointed by President John Kennedy. All we had to do was to get a letter to him by Monday (this was now on Friday) from the APA president making the case for the inclusion of psychologists as providers in the newly enacted Medicare program. The APA board of directors was meeting that weekend, and we struggled all day Saturday and most of Sunday to be granted fifteen minutes to present the case. APA President Jerome Bruner steadfastly refused until finally, President-Elect Nicholas Hobbs, persuaded him to grant us a few minutes, which was eventually extended to an hour as the board listened to our plea. It was decided I would remain in Washington Sunday night, draft the letter and have it early Monday morning for Professor Bruner to sign before he flew back to Harvard. I worked all night drafting a suitable letter, typed it myself on APA stationary, and presented it to the APA executive officer at 9:00 a.m. I was assured the letter would go to Secretary Califano by special messenger, and I left to catch a flight home to San Francisco. Several months passed and I got a phone call from Professor Bruner's secretary asking me what I wanted done with the letter to Secretary Califano. We were left out of Medicare! Ironically, in 1990 I testified with Bryant Welch on behalf of APA before the Congressional committee that finally approved psychology's participation after 25 years of being shut out thanks to APA disinterest.

Professional psychology needs to be proactive, not just reactive. Tired initiatives like parity have been meaningless in spite of its being one of the most successful legislative efforts in the history of mental health. Passed in 39 states and embraced by the federal government, we spend less money as a percentage of the total federal healthcare budget today than we did before parity. Third party payers, fearing run-away claims, have instituted more draconian hurdles for mental health than for physical health. In addition, the millions of prescriptions for psychotropic medications written by primary care physicians can be construed to be mental health services. In contrast to the APA's reactive stances, look at the proactive agenda of the NAPPP. It sure looks like today's successor to the Dirty Dozen. This is why I joined the NAPPP with enthusiasm and sit on the board of directors.

Nicholas A. Cummings, Ph.D., Sc.D.

Distinguished Professor, University of Nevada, Reno  
President, Cummings Foundation for Behavioral Health  
Board Chair, CareIntegra  
Former President, American Psychological Association  
[CummFound@aol.com](mailto:CummFound@aol.com)

## **Benefits of NAPPP Membership**

NAPPP's philosophy is that the organization must serve the needs of its members. Benefits, to the extent possible, should be free or at the lowest possible cost. Many organizations offer benefits that, in reality, are revenue generators. Malpractice premiums and other products are increased by a "marketing" fee that results in increased costs to the member and hidden revenue to the organization. NAPPP is an alliance of psychologists. Our commitment is to avoid this trap so that members can be assured that their dues really buys something. With this philosophy, the following are some of the benefits of a NAPPP membership.

Low cost insurance products. We think that members should tell us what insurance products you want and need. We will then negotiate for the best products at the lowest cost.

**FREE CE CREDITS!**

**FREE CLASSIFIED ADS! FREE SOFTWARE PROGRAMS**

**FREE REFERRAL SERVICE (OTHERS ARE CHARGING \$30 A MONTH!)**

**MEMBER LISTSERV**

**MEMBER BLOG**

**FREE PRACTICE TOOLS YOU CAN USE**

**RESOURCES THAT YOU WILL USE EVERY DAY**

**EFFECTIVE ADVOCACY FOR PRACTITIONERS**

**ALLIANCES WHERE AND WHEN IT COUNTS**

**AN ORGANIZATION DEDICATED TO CLINICIANS ONLY**

**NO BUREAUCRACY**

**To join NAPPP, simply go to its website at: [nappp.org](http://nappp.org)**

[Eds. Note: over the years, CAPP and the Orange County Psychological Association (OCPA) have worked on a number of projects together. Following is an adaptation of an article that

CAPP Board Member, Dr. Berger provided to the OCPA newsletter to catch up their members on some of these projects. We think CAPP members will appreciate an update also.]

ORANGE COUNTY PSYCHOLOGICAL ASSOCIATION (OCPA)

AND

CALIFORNIA ASSOCIATION OF PSYCHOLOGY PROVIDERS (CAPP)

By Stephen E. Berger, Ph.D., ABPP

I appreciate this opportunity to inform new members and remind others of the long history of joint projects between OCPA and CAPP. For two decades the two organizations have been working together for the benefit of psychologists. The two associations first came into contact in 1987, but let's backtrack in time.

### **Hospital Privileges, OCPA, CAPP**

In 1978, the California Legislature enacted Health and Safety Code Section 1316.5 that established that Clinical Psychologists could be on the staff of a hospital. In 1980, the Legislature modified the Statue and stated explicitly that a hospital could not discriminate against the Clinical Psychologists on its staff. Unfortunately, the Department of Health Services (DHS) enacted Regulations in 1983 that negated the non-discriminatory language of the Statue by only permitting a medical physician to make a patient's diagnosis and treatment plan.

Consequently, in 1984 CAPP filed suit against DHS. CAPP won a decisive ruling at the Trial Court. Half a year later, organized medicine filed suit appealing CAPP's victory against DHS – DHS had not appealed, in fact, DHS had already complied with the Court Order. Subsequently, the Appellate Court ruled that the non-discriminatory provision of the Statute does not come into play until a medical physician determined that the mental patient did not have an organic mental disorder and/or that the disorder was not amenable to organic treatment.

Needless to say, CAPP appealed this ruling to the California Supreme Court (*CAPP v. Rank*). At that point in time, Dr. Berger was the Chair of OCPA's Hospital Practice Committee. He was also one of the 8 psychologist plaintiffs (along with the organization CAPP) in the lawsuit.<sup>1</sup> The odds of getting the California Supreme Court to accept a case for review are said to be 1 in 10. A call went out to request letters to the Court asking the Court to accept the case for review. On a Sunday afternoon, OCPA members Drs. Berger, Rofsky, Trevitt and Rosenberg met and drafted a letter to the Court on behalf of OCPA. OCPA had raised sufficient funds that it was able to obtain the legal counsel of Mr. Richard Sherman of the powerful law firm of Irell and Manella who put the final touches to the letter. The letter was considered to be so well written that CPA asked if it could be adapted to be their letter in support of CAPP, and OCPA readily cooperated. We can identify 7 different points that were made in the letter that appear in the final favorable ruling by the California Supreme Court.

Once the Court accepted the case for review there were multiple strategy decisions on the road to the final legal briefs and oral argument at the Court. Because OCPA had been so successful in its fund raising efforts, Mr. Sherman remained available to consult with CAPP's attorney, Ms. Michele Licht, including a critical phone conference on a Sunday prior to an important conference call the next day that included APA and the Washington DC attorneys. As you know, CAPP won at the California Supreme Court in 1990. For more details on these events, you are referred to: Berger, S.E. *CAPP v. RANK*: MORE

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<sup>1</sup> The other individual plaintiffs were: Drs. Stuart Wilson, Larry Blum, Gary Bodner, Corey Fox, A. Steven Frankel, Lisa Pomeroy, Carlton Purviance. Dr.s Wilson and Blum, along with Dr. Berger were and still are Orange County Psychologists.

OF THE INSIDE STORY, The Independent Practitioner, 1992, 12, 54-57. If you are not able to access the article, send Dr. Berger an e-mail, and he can e-mail you a copy: [steveabpp@aol.com](mailto:steveabpp@aol.com).

#### Protecting Patient Confidentiality

A couple of years ago, OCPA was contacted on a Tuesday by the Orange County Public Defender's Office regarding Proposition 36. That Proposition provides for psychological treatment for people convicted of non-violent drug offenses rather than sending them to jail. A conflict developed between the Probation Department (represented by the Orange County District Attorney's Office) and the Orange County Health Care Agency (represented by the Public Defender's office). Needless to say, Probation wanted access to treatment notes of the treating psychotherapist. Within just a couple of days of OCPA being contacted, OCPA joined with (CAPP) in providing support to the Health Care Agency in order to protect the confidentiality of treatment notes. The Tuesday contact had been just 2 days before a regularly scheduled OCPA Board meeting! CAPP acted immediately by phone conference. The Board of OCPA also acted immediately to appoint a three-person committee empowered to act for OCPA, in concert with CAPP, in communicating a joint position that the confidentiality of the treatment sessions of these individuals should be protected.

During these few days, we contacted the APA Practice Directorate and were supplied with legal documents that helped in the Public Defender's Office negotiations with the District Attorney's Office. We were also assisted by Dr. Frankel (mentioned above) who provided us with the United States Supreme Court ruling in *Jaffe v. Redmond* that affirmed that psychotherapy communications are privileged not only in State Court (see California Evidence Code) but are also protected in federal court by virtue of the Court's interpretation of the Federal Rules of Evidence in the *Jaffee* case. **Thus, by Friday of that same week**, we were able to provide documents and arguments that the Public Defender's Office was able to use with the DA's office. The DA's Office agreed that the confidentiality of treatment notes would be protected. We believe that incursions into the confidentiality of psychotherapy must be resisted whenever they occur. If you want a copy of the California Evidence Code as it relates to the Confidentiality of Psychotherapist-Patient Communications, or if you want a copy of the *Jaffee v. Redmond* US Supreme Court ruling, contact Dr. Berger. He also does a power point presentation of the case.

#### Resisting NHIC

As many of you know, when you treat a patient with Medicare coverage, your bill does not go to Medicare, it goes to a fiscal intermediary. The Medicare fiscal intermediary for California is National Health Insurance Company (NHIC). This company had been conducting (post-payment) audits of psychologists' Medicare cases, invariably resulting in demands for **refunds** of many thousands of dollars from the psychologists. OCPA and CAPP became aware of one especially egregious case involving a northern California psychologist. In this case, a psychologist working for NHIC concluded that none of the 30 audited cases met "medical necessity" criteria. In this audit process, it was therefore extrapolated that based on the results of those 30 cases that refunds were demanded for all 101 cases the psychologist had conducted during the audited time period. Thus the psychologist had to refund \$59,000 or else interest would have accrued immediately at 13 ¾ %! The psychologist spent over \$20,000 on legal fees for a Fair Hearing. The Hearing Officer (also paid by NHIC) determined that there was medical necessity in every case. However, psychologists working for NHIC then invented a policy that a Diagnostic Interview (90801) could not be conducted on the same day as neuropsychological testing (96117 – a billing code that has since been changed). According to this new, made up policy, it would be ok to do general psychological testing (96110) on the same day as a 90801, but not neuropsychological testing (96117)! That invented policy allowed NHIC to keep 1/3 of the \$59,000 of the psychologist's money.

APA contributed \$10,000 toward legal fees. CAPP picked up the rest of the legal fees for an Administrative Law Hearing. OCPA made a small financial contribution to the legal fees also, thus putting OCPA squarely behind the psychologist (the NHIC reviewer is from Orange County – no, she is not a dues paying member of OCPA – now there's a surprise). The Hearing was conducted in Oakland. The Administrative Law Judge ruled completely in favor of the psychologist. NHIC did not reject nor did it appeal the Judge's ruling. (You are aware, I assume, that an administrative body such as the BOP - and NHIC is considered to be an administrative agency – and can reject a ruling by an Administrative Law Judge and simply continue to agree with itself.) Dr. Berger served as CAPP's expert witness at the

Hearing. He testified on a Monday. The next day, NHIC sent a letter to Dr. Berger indicating that it was auditing two of his cases. Happy ending - he got paid for both.

#### Once More Into the Breach Rode the ...

As many of you are aware, and all of you should be aware, just a couple of summer's ago, the Appellate Court for the Los Angeles area made a truly bizarre ruling that significantly modified *Tarasoff* and the Duty to Warn and Protect. In a case known as *Ewing v. Goldstein*, the Trial Court ruled that Dr. Goldstein (an MFT) was immune from liability because the Duty to Warn and Protect arises when a patient communicates to a psychotherapist a credible threat of serious bodily injury to an identifiable or reasonably identifiable other or others and the threat in this case was communicated to Dr. Goldstein by the patient's father, not the adult patient. The Appellate Court held that this ruling was in error.

The Trial Court relied upon the wording in the Civil Code that makes psychotherapists immune from liability if they learn from a patient that the patient has made a credible threat of serious bodily injury to an identifiable or reasonably identifiable other or others, and the therapist notifies the police and makes reasonable effort to notify the potential victim(s). Since Dr. Goldstein had not learned of the threat from the adult patient (a police officer) but had learned of this from the patient's father, it would appear to most (if not all of us) that this did not invoke the Duty to Warn and Protect (*Tarasoff* warning). However, this Appellate Court ruled that the words of the Civil Code: "where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims" actually mean: **where the patient or a patient's family member** ... Imagine stupid us not realizing that: "where the patient has communicated" actually means, and should be read as: patient or patient's family member.

Several entities including CAPP sent letters to the California Supreme Court urging the Court to review this case (CAPP provided a copy of its letter to our members last year). Unfortunately, the Court did not accept the case for review, so this is the law now throughout California. And if you are not troubled enough by this new duty (to assess the credibility of communications you receive from family members – whom you may have never met and may be talking with over the telephone, e-mail, fax, note left at your office) try this: In what Dr. Berger likes to refer to as the infamous Footnote #10 to the decision, the Appellate Court brazenly informs us that it is not going to tell us whether the Duty to Warn and Protect arises if we received such communications about the patient's mental state from non-family members. Dr. Berger has no doubt as to what the Court would conclude in that instance. Similar to Dr. Berger, the attorneys for the Los Angeles County Department of Mental Health (DMH) also noticed Footnote #10 and concluded that the Court would rule that such communications **do** invoke the Duty. However, few people discuss Footnote #10 when discussing this case. Dr. Berger and his attorney son, Michael, wrote an article on this for AAP (Association for the Advancement of Psychology – our national PAC: DUTY TO WARN EXPANDED BY CALIFORNIA COURT by Stephen E. Berger, Ph.D., and Michael A. Berger, J.D. *AAP Advance*. For copies of the article, the *Ewing* case, the Civil Code, the DMH Memo, OCPA's letter to the Court or CAPP's letter, contact Dr. Berger.

I hope these 4 vignettes give you good background information on the effective and valuable working relationship that CAPP is capable of building. Too often lately we seem to encounter difficulties with psychologists and psychology associations being able to work together. CAPP remains a unique organization committed to the welfare of psychologists and of our patients.

### **MEMBERSHIP DATA SHEET**

Dues of \$50 for 2007-2008 are Due Sept. 1

(If you join NAPPP through their website (NAPPP.ORG), your CAPP Membership is free.)

NAME: \_\_\_\_\_ DEGREE \_\_\_\_\_  
LICENSE # \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ CITY, STATE,  
ZIP \_\_\_\_\_

WORK TEL.: \_\_\_\_\_ HOME TEL. \_\_\_\_\_ FAX:  
\_\_\_\_\_

E-MAIL: \_\_\_\_\_

MEMBERSHIP IN OTHER PSYCHOLOGICAL ORGANIZATIONS  
(Initials are ok if you are sure we will recognize them):

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CURRENT WORK SETTING: \_\_\_\_\_

CATEGORY OF MEMBERSHIP:	1. FULL	_____ \$50.00
	2. ASSOCIATE	_____ \$50.00
	3. STUDENT	_____ FREE
	4. CONTRIBUTOR	_____

\_\_\_\_\_ Please email me CAPP updates and important breaking news

\_\_\_\_\_ Yes, You can contact me to possibly serve on a committee or do other work for CAPP

\_\_\_\_\_ No, Don't contact me, I am glad to support CAPP, but am not available for anything else

Please Mail to:  
CAPP  
C/O Dr. Stephen Berger  
23461 South Pointe #190  
Laguna Hills, CA 92653

THANK YOU



23461 South Pointe Dr. #190  
Laguna Hills, CA 92653

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2006-2007

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