CAPP
CALIFORNIA ASSOCIATION OF PSYCHOLOGY PROVIDERS

SUMMER 2009

SEE PAGE 2 FOR GOOD NEWS ABOUT DUES AND BENEFITS

PRESIDENT'S COLUMN
Andrew Schwartz, Ph.D.

Once again, Gov. Schwarzenneger is considering the creation of a Board for mental health professionals that would include the profession of psychology. Since we are a doctoral level profession, uniquely trained and distinct from other mental health practitioners, it is not in the public or psychologists' best interest to be lumped together. CAPP addressed this issue in a letter to the governor, January, 2009, stating, "We urge you to recognize that under California law, doctoral level, licensed psychologists are a unique profession that should not be grouped with non-doctoral level practitioners. The public should not be confused and mislead regarding the fact that psychology is a doctoral level profession."

CAPP again will articulate psychology's concerns. We will continue to communicate with the Board of Psychology, the California Psychological Association, and the American Psychological Association.

Because California state policy issues are intertwined with national policies about psychologists, we plan to be present next year when APA meets in California in San Diego, in August 2010. It will be an opportunity for CAPP to have a membership meeting. Such a meeting will allow our psychologist members from all parts of California to meet one another and exchange valuable information about issues vital to our profession.

PAST PRESIDENT'S COLUMN
Jay Slosar, Ph.D.

It has been a pleasure to serve as CAPP President in 2008. Working with such experienced and knowledgeable colleagues such as Steve Berger, Andy Schwartz and Rosalyn Laudati is both fun and satisfying. I hope you will join CAPP and help us continue a long tradition of trying to help Psychologists and promote our profession.

The turbulent changes in our economy have now called into question core issues of how we live. Our increasing cultural narcissism, risk taking and financial deception have caught up with us. As a society, we overdo everything. Our culture of excess has made us all fatter, more in debt and putting more people in prison than any other country. When we do something—we do it big time. Technology and screen media have changed our lives, and the next scientific debate emerges about the effect of screen media on brain development.

And alas—there still is healthcare. As momentum in Congress develops for "change", the hope is that Psychology and mental health will emerge as a more important component for improving our lives. But I must confess, I am not optimistic. California is in such straits, healthcare is viewed from one perspective — how to lower costs. The Governor as chief terminator wants to do away with the Board of Psychology. He

Last year (August, 2008), CAPP officers attended the APA convention in Boston. At the Century Club reception of our national PAC (AAP – Association for the Advancement of Psychology), we heard from a NJ legislator about mental health care and a congressional perspective from outside of California. The message is clear: the more CAPP members that attend APA, the more visible we will be, the more information that will be gained and subsequently disseminated to our colleagues - information and ideas necessary to the practice of psychology here in California. Obviously, at both the individual and county psychology organizational levels, we can make our professional voices heard.

CAPP is attempting to gather information from our members that emphasize our strengths. For example, what successes in your practice might you share with your colleagues that raise psychology on one's radar screen?

The CAPP BULLETIN can be a forum for such successes as well as a forum for our concerns. Please feel free to contact us if you are planning to go to APA or ideas about meeting in various places statewide so that CAPP will continue to serve us psychologists.

WELCOME TO CAPP

Dues Information: Hopefully you remember that for fiscal 2008-9, we reduced dues to just $40.00 (a 20% decrease in dues – small total, big percentage). **(and Percentage)**. We also want to get off a fiscal year and onto a calendar year. Therefore, please note the **dues statement**) on the inside back page. What you will notice is that we have, in effect, made dues just $10 for the last 4 months of 2009, with dues being $40 for calendar year 2010. Thus, we are asking you to make your dues payment $50 for the period Sept. 1, 2009 – Dec. 31, 2010. We appreciate your support and loyalty. We hope you appreciate our fiscal responsibility.

The opinions expressed by the authors of each article are their own and do not necessarily reflect those of CAPP.

keeps trying—over and over again. The devaluation of healthcare professionals is staggering. Work harder—get paid less.

On the national scale, the single payer health care plan is not even on the table. The President has backed off from his original viewpoint and campaign policy. He has stated that it would be too much change to transition to a single payer plan. From my view, if single payer is not even on the table—we don't have a democracy.(In California, while the legislature passed single payer health plan—the Governor vetoed it.) Those sitting at the front in Senator Baucus's congressional hearings are the pay to play powerhouses the insurance companies and big pharma. Pay to play is still the modus operandi.

But still, now is the time to be active. Strike while the iron is hot. So much is going on, despite the rigid barriers, it is a time when you will at least be heard. It is important right now, with continued economic battles and changes in play to be in the mix. Don't be quiet, write and contact every legislator you can. And by all means if you want to become more active in CAPP, please let us know.

Your support is greatly appreciated.

Member Benefit: We have arranged with our General Counsel, Steve Frankel, Ph.D., ABPP, J.D. to create under his status as an APA CE provider, a 4 unit, at home, CE on Ethics and Law and Professional Wills that will be **free of charge to CAPP members whose dues payments are received by Sept. 30, 2009.** In other words, your CAPP dues will enable you to earn these 4 CE credits (until 12/31/2010), for free, that meet the California license renewal requirement. Some of you have just paid your dues that were due Sept. 30, 2008. We think that having you as a member is more important than the day that your Sept. dues payment arrives, even it is not until the following April May, June, even July, but that is why you also are receiving this dues statement.

Editor's Note: Once again CAPP is honored to have an article from former APA President Dr. Patrick DeLeon. As one of the greatest visionaries in the history of psychology, we are all well advised to pay close attention to messages from Dr. Deleon.

INTERESTING TIMES

By Patrick DeLeon, Ph.D., J.D.

This summer, the **White House** released the President's letter to the Chairs of the two Senate Committees with major jurisdiction over Health Care Reform. "The meeting that we held today was very productive…. In 2009, health care reform is not a luxury. It's a necessity we cannot defer. Soaring health care costs make our current course unsustainable. It is unsustainable for our families, whose spiraling premiums and out-of-pocket expenses are pushing them into bankruptcy and forcing them to go without the checkups and prescriptions they need. It is unsustainable for businesses, forcing more and more of them to choose between keeping their doors open or covering their workers. And the ever-increasing cost of Medicare and Medicaid are among the main drivers of enormous budget deficits that are threatening our economic future. In short, the status quo is broken, and pouring money into a broken system only perpetuates its inefficiencies. Doing nothing would only put our entire health care system at risk…. We simply cannot afford to postpone health care reform any longer….

"So we must attack the root causes of the inflation in health care. That means promoting the best practices, not simply the most expensive…. To identify and achieve additional savings, I am also open to your ideas about giving special consideration to the recommendations of the Medicare Payment Advisory Commission (MedPAC), a commission created by a Republican Congress. Under this approach, MedPAC's recommendations on cost reductions would be adopted unless opposed by a joint resolution of the Congress. This is similar to a process that has been used effectively by a commission charged with closing military bases, and could be a valuable tool to help achieve health care reform in a fiscally responsible way. These are some of the issues I look forward to discussing with you in greater detail in the weeks and months ahead. But

this year, we must do more than discuss. We must act. The American people and America's future demand it…. I appreciate your efforts, and look forward to working with you so that the Congress can complete health care reform by October."

A slightly different perspective expressed by the **Senate Minority (Republican) Leader**. "Mr. President, we're all interested in reforming health care. And while this debate has yet to fully play out, we already know one thing for sure: any action we take on this issue will affect every single American. There is no doubt that Americans are frustrated with the increasing cost of health care and that many are worried about losing the health care they have. Many Americans can't afford health care or have to choose between basic necessities and medical care they need. This is what is wrong with the current system, and we need to fix it. Yet it is also true that many Americans are satisfied with the care they have…. The biggest concern is the talk of a Government takeover of health care…. The House Democrats' plan could lead to the creation of a Government board that would determine what benefits and drugs are available to patients and what prices would be charged…. The American people want health care decisions left up to families and doctors, not bureaucrats in Washington. They don't want a Government takeover that denies or delays the care they need, and they don't want politicians telling them how much or what kind they can have."

The **Business Roundtable** which collectively provide health care coverage to nearly 35 million Americans. "When it comes to scientific advances, medical technology and the quality of doctors and medical institutions, America's health care system is without peer. However, rampant cost increases mean those who have coverage are paying more and getting less value in return." Creating greater consumer value by using health information technology, Empowering consumers with more information about good quality care, and Engaging all Americans in taking an active role in their health care are critical policy issues to be advanced.

The President of the **Institute of Medicine** (IOM). "Dealing equally with health care for mental, substance-use, and general health conditions requires a fundamental change in how we as a society and health care system think about and respond to these

problems and illnesses. Mental and substance-use problems and illnesses should not be viewed as separate from and unrelated to overall health and general health care. Building on this integrated concept… offers valuable guidance on how all can help to achieve higher-quality health care for people with mental or substance-use problems and illnesses. To this end, the Institute of Medicine will itself seek to incorporate attention to issues in health care for mental and substance-use problems and illnesses into its program of general health studies." These are indeed "Interesting Times," Aloha,

Pat DeLeon, former APA President – CAPP – June, 2009

Professional Wills, Won'ts and Wonts

A. Steven Frankel, Ph.D., J.D.
CAPP General Counsel

If you have attended one of my law/ethics/regulation workshops over the past few years, you may be familiar with an APA ethical mandate which states:

> "6.02(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice."

Here in California, that mandate is enforceable by law, because our Board of Psychology is expressly required to use the APA ethics code as the standard of care for psychologists (which applies even to those of us who are not APA members[1]). There is at least one other state (Oregon) that took the ethical mandate even more seriously, enacting a statute requiring psychologists to let their licensing board know the name of the colleague who will assume the ministerial duties of a practitioner who is unable to continue to practice.[2]

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[1] 2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

[2] ORS 858-010-0060 Psychological Records (2) Disposition in case of death or

Unfortunately, our colleagues have not exactly warmed to this ethical mandate. I have received far too many calls from spouses of colleagues who have passed away, asking for some help with ways to manage their now-deceased spouse's practice affairs (e.g., office landlord, who wants to be paid rent or lease the office to someone else, threatening to destroy all records and sell off furniture, creditors, patients, etc.) while in the midst of grieving. Then there was a Berkeley psychologist who was murdered in the streets of the East Bay, whose records were sought by the police so they could go on a fishing expedition through his records to see if one of his patients might have been the culprit (a judge appointed a special master to go through the charts) – can you imagine how irate some of your patients would be if they realized that you failed to follow a legally enforceable ethical mandate, resulting in some person going through their records?

Embracing the ethical mandate to plan for unanticipated interruptions of practice is helpful to us, our families, our colleagues and our patients/clients. For us, it ensures that the ministerial functions of closing/transferring our practices will be handled by a competent colleague. Our colleagues will benefit by doing something good for other colleagues, to whom they refer cases, and for our patients, who need continuity of care and of records (e.g., a patient applying for disability or engaged in a lawsuit alleging personal injury will need professional records for their legal cases). Finally, our families and our estates will be protected and sheltered at a time of grief, loss and mourning.

While colleagues who work full time for agencies should have no problems with the "professional will" requirement (as the agency should take care of these issues), anyone with a part- or full time private practice bears this responsibility. I am saddened to report, however, that my discussions with colleagues around the state strongly suggest that large numbers of us who have made efforts to forge mutual agreements with colleagues have failed miserably, and that the overwhelming numbers of us have not attended to the problem at all. Not good.

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incapacity of the licensee. Psychologists and psychologist associates shall make necessary arrangements for maintenance of and access to client records to ensure confidentiality in case of death or incapacity of the licensee. The licensee shall name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacity of the licensee or if the licensee is inactive or has resigned and the former client is unable to locate the licensee.
(3) Qualified Person. A qualified person under this rule is an active licensee.

What I have come to is the belief that the most effective way to address the problem lies in the county professional association structure. The county associations have the greatest access to the grassroots membership. They are thus in the rather unique position of having rosters of geographically compatible colleagues and might well create a matching program for those colleagues. Matching programs might connect colleagues who worked with similar types of populations, offering similar types of services, etc. The programs could also provide enough time for matched colleagues to learn enough about each others' practices, such that they were in positions to make referrals when needed. Finally, in an era where county professional society membership may not be on the to-do list of colleagues whose incomes have been impacted by the economic situation we all face, it seems to me that a matching program would also have a direct benefit of increasing membership roles, dues (and perhaps extra fees for participating in the matching program).

There certainly may be other avenues that can be explored (indeed, I am actively pursuing some of those at this time – more about that in a future column), but for now, I would love to see our county professional societies serve their constituents by developing matching programs.

Why Specialty Certification Is A Must For Clinical Psychologists

John Caccavale, Ph.D.
National Alliance of Professional Psychology Providers

Doctoral level psychologists have long suffered because our profession has not produced any significant studies showing the added value of being a doctoral level, trained practitioner. Not one single study demonstrating the superiority of doctoral training and experience over those with a masters degree and lessor training. Consequently, insurers, third party administrators and employers have taken the least costly route and adopted the position that there is no significant difference between master level practitioners and doctoral level psychologists. We are lumped into a category that is inappropriate and unfair. Clinical psychologists do more than just "talk" therapy. We are an important part of the healthcare system . Yet, we are constantly asked by reimbursers to show them our added value that justifies higher reimbursement and respect.

Specialty Certification Is The Answer

It is impressively clear that it is too late for any study to rescue doctoral level practice. Healthcare economics is just too far ingrained with having cheap labor provide services. However, this will change with national healthcare reform. Doctoral level providers will have an opportunity to get a new start as many of the services now provided by master level practitioners will not be covered. Moreover, many behavioral healthcare services related to medical conditions will be. Doctoral level practitioners will need to demonstrate that we are the best providers for these services. Lacking studies and the tendency to seek cheap labor, our window of opportunity will be short. In our view,

specialty certification is the most effective and efficient way to claim this opportunity and own it. Failure to be proactive will lead to others filling in the void. We must claim the specialty title of **Behavioral Health Providers**.

Specialty certification is not new. ABPP has been around for a long while. However, ABPP certification has never attracted any sizeable number of practitioners. I believe that significantly less than 1% of practitioners hold ABPP certification. One reason is that ABPP is really an academic certification when it comes to specialties. Having an ABPP certification in clinical psychology tells everyone that you are a clinical psychologist -- but so does your degree and license. So where's the value added? There isn't any and practitioners know this. Other specialty certifications from ABPP have the same problem. They are controlled and run by the academic establishment for their benefit. Yet, having a specialty certification that distinguishes a doctoral level psychologist from a master level practitioner can provide the value added of such training and experience. This specialty designation must, however, demonstrate something other than saying you are a clinical psychologist. It must be rigorous and controlled by practitioners.

A Specialty Certification In Behavioral Health Practice

A new board certification is now available that will demonstrate your training, experience, and expertise in providing behavioral healthcare services beyond "talk" therapy. Just as physicians are licensed as physicians but practice in unique specialties, psychologists must also get away from being the generic "clinical psychologist." We may be licensed as psychologists but we are behavioral healthcare providers. We are not counselors, social workers, or academics, who also call themselves psychologists but are seen by others as psychologists. Having a designation of an expert in behavioral health practice can and will open up new pathways for practice. It can and will provide new found respect from physicians who will continue to be the main source for referrals. With a specialty certification in behavioral health practice you will remove the cloud of confusion that hangs over clinical psychology. You will be making a statement that you are part of the healthcare delivery system.

It's Up To Us To Go Forward

Opportunity is never "just around the corner." It is fleeting and time bound. But, just as we tell our patients, change must come from within us. It is the individual psychologist who must take advantage of practice opportunities. The ABBHP is a new board certification with rigorous but fair requirements that allow practitioners to move forward and once again gain the lead as the premier providers of behavioral services. This new diplomate was developed by Dr. Nicholas Cummings, one of psychology's most influential innovators and movers. For further information on this board certification, go to http://www.abbhp.org/.

Note that CAPP continues our affiliation with the National Alliance of Professional Psychology Providers (NAPPP), who maintains our web site for us: capp.nappp.org

Tarasoff "Duty to Warn" Clarified

Stephen E. Berger, Ph.D., ABPP & Michael A. Berger, J.D., MA.[3]

The *National Pscyhologist* brought to the attention of my son, Michael and me, a recent, provocative and potentially very helpful article written for the publication of the California Marriage and Therapist's Association (*The Therapist*, September/October 2008, p.24-30), Richard Leslie, JD. He is Attorney at Law and Of Counsel for the Association. In his article, he addressed some confusion that exists regarding California law and dangerous patients (Leslie, 2008).

He points out that. historically, the issue of our duties when we determine (or should have determined) that our patient is dangerous, arise from the legal case of *Tarasoff v. Regents of the University of California* – decided by the California Supreme Court in 1976. Mr. Leslie points out that our confusion seems to stem from the fact that, previously, in 1974, the California Supreme Court stated in *Tarasoff* that therapists have a "duty to warn" prospective victims. Mr. Leslie points out that when the Court issued its subsequent ruling in 1976, the ruling now **read**s that when a therapist determines "… that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim …" Notice the Duty is now to PROTECT.

Mr. Leslie points out that the Court further ruled that: "The discharge of this duty may require the therapist to … warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever steps are reasonably necessary under the circumstances." Thus, Mr. Leslie makes it clear, by reminding us of the exact words of the Court's 1976 ruling, that in California, the duty is to PROTECT, and in order to fulfill that duty to protect, actions a therapist might have to take could be to warn the potential victim, and/or to notify the police, but such actions were not specifically required by the ruling.

In an effort to explain how so many people think that the ruling in *Tarasoff* is that we have a duty to protect as well as a duty to warn the potential victim and to notify the police, Mr. Leslie references the "immunity" Statute (Section 43.92 of the Civil Code) enacted by the California Legislature in 1986 and amended in 2007. Simply stated, in **our** view (not to be attributed to Mr. Leslie), the Statute states that if a Duty to Protect exists in a given case, that there shall be no liability for a therapist who then notifies the police and makes a reasonable effort to notify the potential victim. In other words, if a therapist does those two things, the therapist is safe from liability. However, even if a therapist

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[3] Stephen E. Berger, Ph.D., ABPP is a California licensed psychologist (PSY3860) practicing in Laguna Hills, CA. He is on the core faculty at Argosy University Orange County California were he specializes in teaching in the forensic concentration and ethics and law. Michael A. Berger, J.D., MA is a California licensed attorney specializing in mental health law while teaching political science and pursuing creative writing.

does not do those two things, the therapist could still avoid liability as a result of other efforts made to "protect" the potential victim (such as hospitalizing the patient, increasing their meds). In other words, neither the Supreme Court ruling in *Tarasoff*, nor the subsequent "immunity" legislation required (imposed a Duty) that therapists notify the police and make reasonable effort to notify the potential victim, but to repeat, under the "immunity" Statute, if a therapist takes those two actions she or he is to have immunity from liability. **To us,** it is understandable that so many have come to (con)fuse the Court ruling and the Statute.

In his article, Mr. Leslie points out that over the years, he came to realize that Courts appeared to be suffering this same (con)fusion, as this misunderstanding was appearing in instructions to juries. Specifically, he found that juries were being instructed that in order for a therapist to avoid liability in cases where patients had harmed others, the therapist had to have notified the police and made reasonable efforts to notify reasonably identifiable victims (Mr. Leslie specifically references the Judicial Council's Jury Instructions). Mr. Leslie informs us that, together, he and others were able to convince the California Judicial Council to "change the wording of the jury instruction so that" the prior misinterpretation of the law "was corrected" and juries would not be told that in order to have immunity from liability in dangerous patient cases that a therapist **had** to both notify the police and make reasonable effort to notify reasonably predictable potential victims.

Mr. Leslie's article also addresses a related issue concerning such warnings. You are referred to his article for his discussion of the relationship of the California Evidence Code and the California Confidentiality of Medical Information Act (CMIA) as they relate to breaking confidentiality of dangerous patients, and recent modification of the CMIA to address this issue. For the moment, it is sufficient to say that the CMIA has been modified (see Section 56.10(c)(19) of the Civil Code) so that it is more clear that therapists **have** "… the authority or permission to disclose …" a patient's dangerousness.

Editor's Note: The above article **first appeared in the March/April 2009 issue of** *The National Psychologist*. ***The National Psychologist,* was founded in 1991** by Henry Saeman, former Executive Director of the Ohio Psychological Association. It is now in the hands of his son Marty Saeman. If you want honest (and sometimes painful) insight into what is going on in Psychology, especially the practice arena, in Dr. Berger's opinion., you must read ***The National Psychologist***. **For a sample copy or to subscribe,** contact Marty at: Natl Psych@aol.com – tell him Steve sent you **or go to their website located at: www.nationalpsychologist.com**. CAPP was featured in the inaugural publication due to our victory in *CAPP v. Rank* in which the Supreme Court upheld our right to independent hospital practice and finding that psychology is an independent health profession. Read more @ capp.nappp.org.

MEMBERSHIP DATA SHEET

Dues of $50 for Sept. 1, 2009 - December 31, 2010

Due Sept. 1, 2009

NAME: _____DEGREE(s)_____

LICENSE #_____

MAILING ADDRESS: _____

CITY, STATE, ZIP_____

WORK TEL.: _____ HOME TEL. _____

FAX: _____ E-MAIL (please): _____

MEMBERSHIP IN OTHER PSYCHOLOGICAL ORGANIZATIONS: _____

_____

CURRENT WORK SETTING: _____

CATEGORY OF MEMBERSHIP:

1. FULL	_____	$40.00
2. ASSOC1ATE	_____	$40.00
3. STUDENT	_____	FREE
4. CONTRIBUTOR	_____	

_____Please e-mail 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
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THANK YOU

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