



-Patients may be overmedicated or suffer for weeks from adverse reactions to combinations of drugs before a doctor responds to their changed condition;

-Family members may make repeated calls to doctors, only to be ignored or to have their concerns brushed off as trivial; and

-Sometimes, adequate medical care is provided only after a patient's condition sinks to the life-threatening point and he/she is moved to a hospital.

One reason for these conditions is that some doctors feel overloaded with patients and underreimbursed by Medi-Cal. As a result, they make only cursory efforts or refuse to treat nursing home patients at all. At the same time, nursing home administrators are lobbying to eliminate citations and fines to which they may be subject when necessary medical care is not provided. "They want to be off the hook if, despite what they feel are conscientious efforts, no medical help arrives."

"But if the conditions ... are appalling, the bureaucratic response to them is even more so." The Commission found that the Department of Health Services' Licensing and Certification Division has no tracking mechanism for medical care complaints; no coordinated recordkeeping for such cases; no guidelines for what constitutes proper medical care; and insufficient personnel and expertise to make a difference. Medical care in nursing homes is not a top priority for the Division.

Nor has the Board of Medical Quality Assurance (BMQA) taken up the banner. Indeed, the Commission found BMQA to be "singularly inactive in this area, having neither adopted standards of care for nursing homes nor instituted a fine and citation system for those who fail to provide adequate care." (See *supra* FEATURE ARTICLE for further information on this issue.)

According to the report, the state has failed the elderly, and no other person, group, or organization has stepped in to advocate the needs of this very vulnerable population. The Commission recommends that steps be taken to create a responsive monitoring system which would encourage good medical care in nursing homes, and to increase the number of doctors trained in geriatrics and willing to specialize in treating the elderly. Eighteen specific recommendations were made, including the following:

-Nursing homes should be required to set up peer review systems for doctors who provide medical care in their facilities;

-Medical directors of nursing homes

should be limited to handling only up to 400 beds or floor facilities;

-The Licensing and Certification Division should convene an ad hoc committee to create standard-of-care guidelines;

-BMQA should be required to implement a fine and citation system that reflects the Division's guidelines;

-The Licensing and Certification Division and BMQA should be required to develop better mechanisms to track cases and coordinate records;

-Continuing education course requirements in geriatrics and chronic care should be imposed on all doctors who treat more than five nursing home patients within six months; and

-A fund should be established to increase the availability of medical care to the elderly by attracting doctors into the geriatrics field.

Public Hearing on the State's Boards, Commissions, and Authorities. On February 24 in Sacramento, the Commission heard testimony (from which a report will be released) regarding the state's boards, commissions, and authorities, including the following and related topics: criteria for determining the need for a multiple-member policy or regulatory agency; criteria for the initial establishment of a board or commission; methods of evaluating the effectiveness of boards and commissions; and use of "sunset" criteria for each of the various types of boards, commissions, and authorities.

Professor Robert C. Fellmeth, Director of the Center for Public Interest Law, was among those testifying. Prior to creating a new regulatory/licensing agency, Fellmeth stated, the following tests should be met:

-In deciding whether to regulate, the precise market flaw justifying such action must be identified.

-The spectrum of possible and alternative societal mechanisms to redress the identified flaw, including the efficacy, costs, and benefits of each, must be considered.

-Because the licensing alternative is an extraordinary intrusion into the marketplace, operating as a "prior restraint", it should be presumptively disfavored. Licensing should be chosen only where irreparable harm to others would be likely without the prior restraint; the prior restraint is precisely directed at and will likely lessen that harm; the prior restraint is a more cost-effective means to lessen the harm than are the alternatives; and the total benefits of the system exceed its total costs.

-Once the regulation system chosen is instituted, care should be taken to

avoid expansion beyond its defensible justification.

-Multi-member bodies are preferable to directorates because open decision-making after public discussion are required of the former. At minimum, an advisory board should be established to advise single persons with rulemaking and adjudicatory powers.

-No person who is a currently practicing member of a profession should be a state official or member of the board regulating that profession, so as to guard against any present vested personal profit stake in decisionmaking. Agency staff and comment from the profession regulated should provide expert advocacy—where necessary—to a neutral policymaking board.

DEPARTMENT OF CONSUMER AFFAIRS

*Director: Michael Kelley
(916) 445-4465*

In addition to its functions relating to its forty boards, bureaus and commissions, the Department of Consumer Affairs (DCA) is charged with the responsibility of carrying out the provisions of the Consumer Affairs Act of 1970. In this regard, the Department educates consumers, assists them in complaint mediation, advocates their interests in the legislature, and represents them before the state's administrative agencies and courts.

MAJOR PROJECTS:

Dispute Resolution Program. This DCA-sponsored program consists of a network of informal and affordable county-based mediation centers throughout the state, based on the idea that an impartial mediator can often help adversaries reach a mutually satisfactory settlement. It is hoped that the program will defuse many disagreements which might otherwise end up in an already crowded state court system. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 33 for background information.) Presently, seventeen counties participate in the program with a total of 21 funded programs.

The program gained widespread publicity in March as a result of an article published in *California Lawyer* entitled "Dog Cases", referring to the cases taken by community mediators which have been rejected by lawyers. The article notes the dramatic growth in mediation services across the state, due largely to the funding provided by the Dispute Resolution Program. Twelve years ago,



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only about 100 mediation programs existed in the entire country; now, more than 400 exist nationwide, with 21 programs in California.

Once a barrier to the development of mediation programs, the legal profession's skepticism is waning as lawyers enjoy the unexpected benefit of turning frustrated citizens into satisfied clients. Mary-Alice Coleman, DCA staff counsel and former executive officer of the now-sunsetted Dispute Resolution Advisory Council, expects more counties to become involved in the growth of mediation services.

At this writing, the Dispute Resolution Advisory Council has not yet submitted its final package of regulations concerning the statewide dispute resolution program for consideration and formal adoption by the Office of Administrative Law. The proposed regulations, which were developed pursuant to the Dispute Resolution Programs Act (Business and Professions Code section 465 *et seq.*), are expected to be submitted within the next few months. The regulations will establish funding and operating procedures for the local dispute resolution programs, including provisions which require grantees to promote their services by educating the public and other potential referral agencies about dispute resolution processes; provide standards for allocating and disbursing grant funds; and require counties to establish an interest-bearing account into which all revenues generated pursuant to the Act will be deposited.

Sunrise Questionnaire. During the last two years, DCA has utilized a Sunrise Questionnaire to gather information from professional and occupational groups which propose to become licensed and regulated by DCA. The questionnaire is designed as a self-assessment tool for groups which contend that regulation is necessary to protect the public or to develop entry barriers to the profession or trade. Questions focus on the identification of consumer groups which seek the practitioner's services; whether there has been public demand for regulation; whether unregulated practice of the occupation would harm or endanger the public health, safety, and welfare; whether any alternatives to regulation exist; whether the occupation is clearly distinguishable from other professions which are already regulated; the economic impact of regulation; and whether the occupation requires possession of knowledge, skills, and abilities that can be taught and tested.

The information obtained from the

questionnaire is analyzed by DCA staff members, who then issue a report to the professional or trade group about whether its proposal is valid. The questionnaire is also used by DCA staff in reporting to the legislature on the proposed licensure and regulation of such groups. Thirteen groups have utilized the questionnaire in the last two years, including chimney sweeps, dieticians, and pharmacy technicians.

LEGISLATION:

AB 538 (Moore) would require DCA to report to the legislature on the following: the number of electronic commercial services operations in the state; compliance with the Electronic Commerce Act of 1984; any complaints regarding services; and any actions brought against electronic commercial services within the previous year by law enforcement agencies pursuant to the Act. At this writing, AB 538 is pending in the Assembly Utilities and Commerce Committee.

AB 320 (Speier) would permit the buyer of a dating service or weight loss contract to cancel the contract within three days after signing. The bill would require such contracts to be in writing, and the buyer must receive a copy. Further, the bill specifies that notice of cancellation, however expressed, is effective if it indicates the intention of the buyer not to be bound by the contract. This bill is pending on the Assembly floor.

SB 787 (Rosenthal) would prohibit the sale of a used car by a dealer unless accompanied by an express written warranty covering the full costs of both parts and labor necessary to repair any defect that impairs the motor vehicle's use or safety. It would also require the seller to disclose to a prospective buyer all defects or malfunctions known to the seller that impair the vehicle's safety or substantially impair its use. Failure to comply with the disclosure requirements provides the buyer with the opportunity to rescind the sale within thirty days. At this writing, SB 787 is pending in the Senate Insurance, Claims and Corporations Committee.

The following bills are pending in the Assembly Committee on Governmental Efficiency and Consumer Protection at this writing:

AB 552 (Moore) would authorize the buyer of a motor vehicle, pursuant to a conditional sale contract or purchase order, to cancel the agreement within three days after signing the agreement.

AB 718 (Frazee) would increase the disclosure rights of consumers who lease

vehicles. The bill would require that the lease contract contain both the method of determining any penalty for default or early termination and the amount of the penalty based on twelve-month intervals.

ASSEMBLY OFFICE OF RESEARCH

*Director: Steve Thompson
(916) 445-1638*

Established in 1966, the Assembly Office of Research (AOR) brings together legislators, scholars, research experts and interested parties from within and outside the legislature to conduct extensive studies regarding problems facing the state.

Under the direction of the Assembly's bipartisan Committee on Policy Research, AOR investigates current state issues and publishes reports which include long-term policy recommendations. Such investigative projects often result in legislative action, usually in the form of bills.

AOR also processes research requests from Assemblymembers. Results of these short-term research projects are confidential unless the requesting legislators authorize their release.

MAJOR PROJECTS:

State Resources to Enable Development of Community Nonprofit Skilled Nursing Facilities (December 1988) identifies potential sources of state support to enable the creation of freestanding, nonprofit, community-based skilled nursing facilities, and suggests alternatives for future funding. Additionally, the report discusses the role of the community nonprofit facility within the continuum of long-term services.

The report states that several factors will dramatically increase California's need for long-term care services, including the increased growth in the elderly population, which is more vulnerable to chronic disability as a result of an increased life span; rising health care costs; and changing family structures which are no longer able to provide informal care-giving to the elderly population. These trends indicate a growing demand for formal, long-term care services, a portion of which will be provided in nursing homes.

The report recommends development of nonprofit, community-based nursing facilities. This model of care is a hybrid of the nonprofit and public models of nursing health care. As a public benefit corporation, this type of facility is affili-