

## Report to Council

Government Affairs Committee

February 9, 2023

### GAC meeting of February 7, 2023

1. **Welcome and Introductions:** The Co-chairs welcomed members to the meeting and reviewed the draft agenda.
2. **Multilevel Issues:**
  1. **SCPS/CSAP role in Area 6:** (See attachment 1) The committee discussed the issue pending before the CSAP board concerning coordination of CSAP with Area 6 Assembly, and reviewed past SCPS motions that encourage closer relationship between the two entities. This follows the decision of Area 6 Assembly to work with CSAP to develop a framework. The SCPS motion (See attachment 1) was agendized but not discussed at the CSAP meeting of 2/02, and it has now been re-agendized to 2/16. The motion seeks to immediately invite Area 6 participation in CSAP Board meetings, and refer potential bylaws changes to the 5 DBs that would establish voting representation by the Area 6 Assembly Rep and the Area 6 Trustee on the CSAP Board.
  2. **CSAP GAC and CSAP actions passed on 02/02 in implications for state and national issues:** (See attachment 2) The committee discussed effect of the three SCPS motions passed by CSAP Board:
    1. **Private practice-focused legislation agenda:** CSAP committed to the development of a CSAP Private Practice Grid of 3-5 high-priority issues and associated legislation that may further encourage development of a private practice committee at CSAP and re-creation of a private-practice component at APA.
    2. **AB 1278: Regulations that disproportionately impact private practitioners:** CSAP committed to exploring the potential for modifying the AB 1278 regulation that requires a physician to “conspicuously post the Open Payments database notice on the internet website used for the physician and surgeon’s practice, rather than offering a standard set of options for such disclosures.
    3. **Investigation of DOJ/CURES regulatory foundations:** CSAP committed to pursuing an investigation into DOJ and CURES practices that are perceived by some as extra-regulatory instruments of prescribing controls that fall particularly heavily on private practitioners.

3. **Federal and APA Issues:** The committee discussed APA information indicated possible extension of modified Ryan Haight regulations concerning mandatory face-to-face meetings related to prescribing of controlled substances.
4. **CSAP GAC (CGAC):** SCPS GAC reps to CSAP GAC Drs. Wood (SCAP GAC Chair), Halpin, Little, Shaner): The second February CSAP GAC meeting is scheduled for 2/16. The committee discussed key issues from the meetings of 1/19 and 2/02.
  1. **Update on Legislation ideas collected from membership by CSAP:** The update is still pending, in part due to attention sponsorship and positions related to emerging key legislation, including new Eggman Bill regarding LPS definitions of grave disability. Concerns were expressed regarding the ability of other advocacy organizations to more quickly and publicly respond to advocacy issues raised by SCPS members.
  2. **Sacramento Legislation Day:** Various permutations for leg day were again discussed at great length without clear resolution as to next steps. The SYASL opinion was that the most effective format would be zoom meetings with key legislators, as was discussed some months ago. Some CSAP GAC members emphasized that, in their view, DB membership engagement would be increased by having a traditional in-person legislative experience, even if the meetings were with legislative aides rather than legislators. Some felt it should be in Sacramento, others suggested local offices. No decision was made.
  3. **“Dead names” initiative:** This issue (removal of previous names of current practitioners from MBC website) was discussed at great length at the CSAP GAC and supported, but the SCPS GAC did not further consider it at this meeting.
  4. **CSAP Board:** (SCPS CSAP Board members Zeb Little, Rod Shaner) The committee discussed the CSAP Board meetings of 1/17 and 2/02 (2/02 meeting attended by Dr. Woods as proxy for Dr. Little). The two meetings were dominated by discussion of the implications of the recognition of CSAP as the sole entity representing psychiatrists as a part of the CMA Specialty Delegation. Pending the terming out in July of a CMA COL representative of a different psychiatric advocacy organization not affiliated with the APA, an alternative COL delegate (non-voting) was selected by the Board, emphasizing “north/south” state balance and private practice experience. Mina Hah, MD, from CCPS was voted as the alternative delegate for the period between now and midyear. Beyond approval of CAP GAC recommendations regarding legislation and another extensive discussion of leg day, the meeting ended without discussion of the Area 6 Assembly Motion by SCPS, which is now on the agenda for the 2/16 Board meeting.
5. **SCPS advocacy issues**

1. **Adolescent ECT Advocacy Initiative:** (See Attachment 3) The committee discussed the adolescent ECT initiative submitted by SCPS to CSAP but not yet acted upon by that CSAP. As there was much interest by local practitioners in advocating for regulatory changes what would better define meaning of “emergency situation” and “life saving treatment” currently mandated as a pre-condition for court approval, the committee unanimously voted to move that SCPS reach out to the Southern California Society of Child and Adolescent Psychiatry (SCSCAP) to develop a joint effort to escalate the issue to a state level. The national significance of the effort was noted.

**Motion 1: That SCPS collaborate with SCSCAP to jointly urge CSAP and Cal-ACAP to initiate legislative effort to define the terms “emergency situation” and “life-saving treatment” as they appear in WIC 5326.8(a) in the context of approval of ECT for adolescents, with the goal of ensuring more uniform and timely determinations by judicial officers.**

2. **Riese Hearing Advocacy Initiative:** (See attachment 4) The committee discussed the Riese Hearing initiative submitted by SCPS to CSAP but not yet acted upon by that CSAP. Given that the issue of sequential Riese hearings appears to stem from “local rules” of some Superior Courts, the committee unanimously voted to move that SCPS reach out, inviting NAMI and hospital systems to join us, when possible, to SCPS Superior Court districts within SCPS borders, at the direction of Councilors from those areas, to request information concerning the rationale for such local rules, share the adverse clinical impact of such rules, and request their modification.

**Motion 2: That SCPS, in collaboration with NAMIs and other local hospital systems within the SCPS area, request information from Local Superior Court Divisions, starting with Los Angeles, concerning the rationale for local court rules that impose local limitations beyond limitations in WIC 5336 on the duration of granted Riese petitions, noting the adverse clinical impact of such rules and, and requesting their modification.**

3. **Update on SCPS Private Practice Townhall meeting planning and advocacy coordination between GAC and Access to Care, Private Practice, and Managed Care Committee (Dr. Goldenberg [Chair, PPPC], Dr. Friedman [Chair, ACC], Dr. Burchuk [ACC], GAC Co-chairs,).** Dr. Goldenberg led the committee discussion of ongoing work on the townhall meeting and the current working document.
4. **CSAP PAC Contribution:** The committee was informed by the SCPS executive director that the maximum permissible contribution to the CSAP PAC for 2023 has been increased to approximately \$9100. The committee noted that the CSAP PAC has not yet completed selection of its Board of Directors and finalization of

its operating procedures. However, considering the importance of having a well-funded state PAC during this legislative session and the already budgeted SCPS funding, the committee voted to recommend to SCPS Council that it approve maximum permitted amount be approved.

**Motion 3: That SCPS approve the maximum permissible contribution to the CSAP PAC for 2023.**

**6. Next SCPS GAC Meeting:** February 7, 2023, from 7:00 PM – 9 PM.

**Attachment I: Pending CSAP motion on CSAP/A6A Collaboration****Motion: To establish a framework for initiating development of state legislative advocacy coordination that is compliant with the APA Area 6 Assembly motion of 2023-01-18**

Draft 2023-02-01b

**Whereas,**

CSAP can take immediate steps to ensure that its legislative planning and advocacy is fully transparent and responsive to direction from A6A, and

**Whereas**

The APA Area 6 Assembly (A6A) is composed of representatives from each of the five California APA District Branches (DBs) to the APA Assembly and, under the Procedural Code of the APA Assembly, is tasked with national and state advocacy development by its five APA DBs; and

**Whereas,**

CSAP is the APA State Organization for A6A and has responsibility under the Procedural Code of the APA Assembly for coordinating state legislative advocacy by the five APA DBs composing Area 6; and

**Whereas,**

Coordination of state and national legislative advocacy between A6A and CSAP through robust communication and joint planning would likely increase the advocacy effectiveness of APA, the A6A, the Area 6 District Branches, and general Area 6 APA membership; and

**Whereas,**

CSAP coordinates state advocacy and national advocacy with input from the APA Office of State Government Relations, an entity reporting to the APA Board of Trustees, and

**Whereas,**

Proactive changes in CSAP Board meeting agendas and modifications of the Procedural Code of CSAP can forward these goals and require approval by all five APA District Branches;

**Therefore, be it resolved that:**

For purposes of furthering coordination of legislative advocacy on behalf of psychiatry in California with the APA Area 6 Assembly (A6A), CSAP will undertake the following steps for 2023:

1. The CSAP Board will invite the A6A President (or designee) and the Area 6 Trustee to all regularly scheduled CSAP Board meetings to present reports and other items as the Area 6 Assembly and APA Board of Trustees find appropriate for strengthening state advocacy effectiveness.
2. With the required approval of all five Area 6 District Branch Councils, CSAP will modify its Procedural Code in the following manner:
  - a. Establishment as ex officio voting CSAP Board positions
    1. the A6A President (or designee), should the Area 6 Assembly agree;
    2. the Area 6 Trustee, should the Area 6 Trustee agree.
  - b. Identification of the CSAP Board Chair (or designee) as the ex officio CSAP representative to the A6A, should such representation be established by the A6A.
  - c. Establishment of a Joint Advocacy Coordination Committee with A6A, should the A6A approve its convening, with members from all five DBs, for purposes including:

1. Reviewing and exploring frameworks and opportunities to coordinate legislative and policy initiatives at state and national levels.
2. Possibly developing a joint annual advocacy conference with Area 6 Assembly, open to Area 6 DB membership, to review state legislative advocacy initiatives in the context of APA national goals and objectives and encourage advocacy activity by APA Area 6 membership.

## **Attachment II: Passed CSAP Motions by SCPS with special implications for Private Practice**

### **Summary of Motions:**

1. Possible establishment of a concise and regularly updated list of specific statewide issues and legislation of highest relevance to the private practice of psychiatry.
2. Possible exploration of advisability and opportunities to clarify and/or steps necessary for practitioner compliance with AB 1278 (2022).
3. Possible partnership with CSAM and other stakeholder groups to clarify the authority for recent DOJ and MBC investigations and sanctions of physicians based on CURES data in the absence of patient complaints or waivers of confidentiality.

**SCPS CSAP GAC Agenda Item 1:** Possible establishment of a concise and regularly updated list of specific statewide issues and legislation of highest relevance to the private practice of psychiatry.

**Origin:** SCPS Council Resolution pursuant to SCPS GAC report of 2022-10-13 to seek CSAP identification of specific advocacy efforts supporting the private practice of psychiatry.

**Associated Draft Motion:** That CSAP GAC recommend adoption of the following resolution by the CSAP Board:

#### **CSAP Board Resolution:**

##### **Whereas,**

Psychiatrists in private practice have significant interest in specific legislative advocacy efforts that support the private practice of psychiatry; and

##### **Whereas,**

Psychiatrists working predominantly in private practice settings often have fewer opportunities to interface with health system administrators and executives and legislators to gain experience with administrative and legislative issues and actions related to machinery to gain firsthand experience in legislative agendas and advocacy than do psychiatrists in working in public systems or in administrative roles in private health organizations; and

##### **Whereas,**



Properly focused psychiatric advocacy efforts should be crafted with a comprehensive understanding of the effects of current regulation upon private practice;

**Therefore, be it resolved that:**

CSAP shall devote legislative advocacy resources sufficient to permit development and regular updates of “Advocacy Bulletin for Private Practice” consisting of a concise list of highest priority statewide issues and legislation most affecting the private practice of psychiatry, along with associated CSAP advocacy actions that:

1. Focus upon key CSAP legislative advocacy efforts regarding issues of critical concern to DB members in private practice and
2. Improve the abilities of psychiatrists in private practice to provide high quality, effective care to their patients.

**SCPS CSAP GAC Agenda Item 2:** Possible exploration of advisability and opportunities to clarify and/or steps necessary for practitioner compliance with AB 1278 (2022).

**Origin:** SCPS Council Resolution pursuant to SCPS GAC report of 2022-10-08 to seek CSAP advocacy resources to bring issues associated with the passage of AB 1278 to state administrative and legislative attention and explore potential follow up legislation to clarify and/or amend steps necessary for compliance.

**Associated Draft Motion:** That CSAP GAC recommend adoption of the following resolution by the CSAP Board:

**CSAP Board Resolution:**

**Whereas,**

There is no precedent for the AB 1278 mandate that appears to require physician practice websites share or post specific text or links; and

**Whereas,**

The state government already has the means, obligation, and tools to publicly market and distribute their own website link and notices; and

**Whereas,**

The new AB 1278 mandate places an unfair and unnecessary burden on small businesses and in particular private practice psychiatrists; and

**Whereas,**

Under AB 1728, a violation of these physician website posting requirements constitutes unprofessional conduct, and this would have detrimental impacts on both physicians and their patients; and

**Whereas,**

The California Medical Board already requires that physicians use one of several methods to communicate important consumer rights information to their patients;

**Therefore, be it resolved that:**

CSAP shall explore administrative and legislative opportunities to clarify and/or amend AB 1728 to ensure that compliance with AB 1728 may be achieved through communication of the required consumer rights information via provision of notice by methods already specified by the Medical Board of California regulations that state:

1. The required notice be provided by one of the following methods:
  1. Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 48-point type in Arial font,
  2. Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the physician is licensed and regulated by the board,
  3. Including the notice in a statement on letterhead, discharge instructions, electronic notice, or other document given to a patient or the patient's representative, or
  4. Including the notice on the medical practice website.
2. Failure to comply is managed by the MBC and could result in citation-and-fine.

**SCPS CSAP GAC Agenda Item 3:** Possible partnership with CSAM and other stakeholder groups to clarify the authority for recent DOJ and MBC investigations and sanctions of physicians based on CURES data in the absence of patient complaints or waivers of confidentiality.

**Origin:** SCPS Council Resolution pursuant to SCPS GAC report of 2023-01-08 to seek CSAP partnership with CSAM and other advocacy groups to seek clarify regarding recent DOJ and MBC activities regarding investigations and sanctions of physicians based on CURES data in the absence of patient complaints or waivers of confidentiality.

**Associated Draft Motion:** That CSAP GAC recommend adoption of the following resolution by the CSAP Board:

#### **CSAP Board Resolution**

**Whereas,**

CSAP, CSAM, and California APA District Branches have received numerous complaints from physicians and administrative attorneys who represent physicians, concerning requests by the Medical Board of California (MBC) for patients records in the absence of any specific patient complaints or signed waivers of confidentiality; and

**Whereas,**

These MBC requests appear to be related to physician prescribing practices or patterns without clear allegations of improper prescribing; and

**Whereas,**

The investigations associated with the MBC requests are time-consuming, costly, and stressful; and

**Whereas,**

These MBC investigations impose a significant negative effect on potentially legal and clinically appropriate prescription of medications and on patient confidentiality; and

**Whereas,**

The chilling effect on practice may adversely impact proper patient care and a patient's legal right to confidential care; and

**Whereas,**

The DOJ and Medical Boards authority for engaging in these activities is unclear to us, the algorithms used to identify physicians for investigation have not to our knowledge been developed or validated in association with any recognized medical organizations or objective measures, and the monitoring and oversight of these activities appears insufficiently transparent;

**Therefore, be it resolved that**

CSAP shall seek partnership with CSAM, CMA, and other stakeholders to bring this issue to administrative and legislative attention, seeking clarity regarding investigative algorithms, basis of DOJ and MBC authority for investigations, basis for any subsequent disciplinary actions, and confirmation or refutation of the perception by physicians and administrative attorneys that the use of patients confidential information is being used by these agencies to investigate, bully and harass physicians' prescribing behavior even when it does not violate any existing regulations or law.

## **Attachment III: Adolescent ECT Initiative**

### **Advocacy Issue: Need for Clarification of WIC 5326.8 WIC Governing ECT for Adolescents**

Draft:

#### **Problem:**

5326.8(a) proscribes ECT for individuals over age 12 and below age 16 unless "It is an emergency situation and convulsive treatment is deemed a lifesaving treatment." In practice, however, there are long delays between clinical recommendations for treatment and subsequent approval. This delay often due to apparently insufficient consensus as to what constitutes "an emergency situation" and a "lifesaving treatment" under such circumstances. Appropriate legislative actions to add regulatory language that recognizes the severe short- and long-term effects of treatment delays upon adolescent health and development may ameliorate this situation.

#### **How does it affect individuals with mental illness and behavioral health needs and their families?**

Adolescents with severe depression for whom other interventions are either ineffective or contraindicated, and their families, are denied timely access to ECT because of the absence of state regulations that define "emergency situation" and "lifesaving treatment" with sufficient clarity in this context. The ensuing delays in treatment exacerbate short and long term medical, psychological, and developmental impacts of severe depression upon adolescents that otherwise meet all clinical standards for treatment with ECT.

#### **How does it affect psychiatrists?**

Psychiatrists hesitate to prescribe ECT in adolescents due to the lack of clarity in regulatory prohibitions of its use and the likelihood that an otherwise effective treatment may be unacceptably delayed and , may require devotion of extensive clinical and hospital resources to administrative and legal burdens.

#### **Is there a specific state-level law you are aware of that governs this issue?**

WIC 5326.8(a). (See attachment)

#### **Who else cares about this issue and would partner with us on it?**

At least one major teaching hospital in Los Angeles would likely partner. NAMI and AACAP might also partner.

#### **Who might oppose this issue and/or what is the opposition to this issue?**

Groups that oppose the use of ECT in adolescents would potentially have concerns, depending on the nature of any new regulatory language.

**Any additional context or concerns? Have there been previous attempts to make these changes or similar?**

A sophisticated review of CCR may be necessary for preparation of conforming language. Proposed new regulatory language would necessarily require crafting in a way that assures potential bill authors that they would not become unnecessarily vulnerable to criticism from those who may wish to portray them as endangering adolescent health.

**Reference: WIC 5326.8**

ARTICLE 7. Legal and Civil Rights of Persons Involuntarily Detained [5325 - 5337] ( Article 7 added by Stats. 1967, Ch. 1667. )

5326.8.

Under no circumstances shall convulsive treatment be performed on a minor under 12 years of age. Persons 16 and 17 years of age shall personally have and exercise the rights under this article.

Persons 12 years of age and over, and under 16, may be administered convulsive treatment only if all the other provisions of this law are complied with and in addition:

(a) It is an emergency situation and convulsive treatment is deemed a lifesaving treatment.

(b) This fact and the need for and appropriateness of the treatment are unanimously certified to by a review board of three board-eligible or board-certified child psychiatrists appointed by the local mental health director.

(c) It is otherwise performed in full compliance with regulations promulgated by the Director of State Hospitals under Section 5326.95.

(d) It is thoroughly documented and reported immediately to the Director of Health Care Services.

(Amended by Stats. 2012, Ch. 34, Sec. 90. (SB 1009) Effective June 27, 2012.)

## **Attachment IV: Riese Hearings Local Rule initiative**

### **Advocacy Issue: Modification of WIC 5336 ("Riese hearings")**

Draft:

#### **Problem:**

WIC 5336 "Riese hearings" specifies that "Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect only for the duration of the detention period described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner."

At least one very large California superior Court Department (Los Angeles) has a local rule stating that

*"Each additional holding period necessitates a new medication capacity hearing if the patient continues to refuse medication, unless the hearing was conducted during the initial 72-hour evaluation period, in which case, the finding of the hearing officer continues through the expiration of the 14-day hold. If a refusing patient is placed on Temporary Conservatorship under Welfare and Institutions Code section 5352.1, the treating facility may request a judicial hearing by contacting County Counsel's Office."*

This local rule leads to dangerous discontinuities in treatment during LPS detention while court approval is awaited when the LPS code section for detention changes and days go by without authorization to treat.

Modification of WIC 5336 by clarifying that the duration of a granted petition cannot arbitrarily be limited to the period of detention under a particular section of LPS, rather than to the presence of LPS detention under any applicable LPS section.

#### **How does it affect individuals with mental illness and behavioral health needs and their families?**

Individuals under LPS detention are often in the process of stabilization of various antipsychotic medications administered under the provisions of "Riese." These medications must be carefully titrated and monitored. Stopping such medication at arbitrary points during LPS detention, based on a local rule, exposes patients to unjustified clinical risks without any basis in WIC beyond an assertion of unspecified local court discretion.

#### **How does it affect psychiatrists?**

Psychiatrists must mitigate the clinical risks in stopping medications during titration and must devote clinical and administrative resources to tasks not otherwise specified in California regulations.

**Is there a specific state-level law you are aware of that governs this issue?**

WIC 5336.

**Who else cares about this issue and would partner with us on it?**

Local and perhaps statewide hospital associations and NAMI. Perhaps some judicial groups.

**Who might oppose this issue and/or what is the opposition to this issue?**

Groups that oppose psychiatric treatment delivered without patient consent. Some local Superior Courts might be opposed for other reasons currently unknown to us.

**Any additional context or concerns? Have there been previous attempts to make these changes or similar?**

While Ventura and San Francisco Superior Courts do not have analogous local rules regarding 5336, preliminary work may be necessary to survey other Counties and potentially to meet with judicial groups to explore alternatives to legislative action crafting new regulation. It is not clear whether previous attempts to make similar changes have occurred, and this would also need to be researched.

**Reference:**

WIC ARTICLE 7. Legal and Civil Rights of Persons Involuntarily Detained [5325 - 5337] ( Article 7 added by Stats. 1967, Ch. 1667. )

5336.

Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect only for the duration of the detention period described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner.

(Added by Stats. 1991, Ch. 681, Sec. 6.)