

the promoters of Proposition 103 promised and contrary to its intent. This would be unfair discrimination; it would create excessive and arbitrary rates.

Faced with this conflict, I have chosen to follow the law. But I also believe it is in my power under the law to implement the statute so that rates do not arbitrarily rise for good drivers. To do this, I have ordered that, notwithstanding the rates that result from the mandated preference, no rate can be increased over what the actual risk would normally warrant.

To further protect everyone from unfair and disastrous rate increases, I have already advised that I will not allow a rate increase in any one year by more than the percentage increase in the Consumer Price Index for the preceding year.

This is all I can do. I hope it is enough. I am already in litigation with insurers over my October freeze on auto rates. Some insurers are still suing to increase rates. And soon I will be counter-suing to enforce these regulations and to avoid unfair increases. It will be a long, hard battle. I am out-gunned, but I will fight to the end.

I have also provided for "good driver rights" and have ordered that insurers implement the "take all comers" provisions of Proposition 103 in a meaningful and efficient way. I have ordered the use of 800 numbers. I am requiring information on all recent policy cancellations so that the Department of Insurance can monitor insurer conduct in this area.

I have also provided for creation of a central data bank for historical loss data. This will ensure that we have credible rating data for future reference.

Today I have taken some aggressive steps to implement both the specific provisions and the underlying intent of Proposition 103. I have done my best to make a conflicting statute work for California.

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ADOPT SUBCHAPTER 4.7 TO READ:

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CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 5,
ADOPT SUBCHAPTER 4.7 TO READ:

SUBCHAPTER 4.7 PRIVATE PASSENGER AUTOMOBILE RATING FACTORS

Article 1. Scope.

Section 2632.1. Scope.

(a) California Insurance Code Sections 1861.01 et. seq., (Proposition 103) were adopted on November 8, 1988. Although the promotional material for Proposition 103 promised 20% rollbacks from the charges which were in effect on November 8, 1987 unless an insurer could prove it would be substantially threatened with insolvency, this provision was declared unconstitutional by the California Supreme Court in Calfarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989). Certain other provisions were also declared unconstitutional.

(b) While significant portions of Proposition 103 were found to be unconstitutional by the California Supreme Court, the Court upheld the remaining portions and it has been the task of the Insurance Commissioner to mold the fragmented law into a workable whole.

(c) Sections 1, 2 and 3 of the Initiative Measure (Proposition 103) provide, in pertinent part:

"Section 1. Findings and Declaration.

The People of California find and declare as follows: Enormous increases in the cost of insurance have made it both unaffordable and unavailable to millions of Californians."

"The existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates."

"Therefore, the People of California declare that insurance reform is necessary.

[continued]."

"Section 2. Purpose.

The purpose of this chapter is to protect consumers from arbitrary insurance rates and practices, to

encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians."

"Section 3. Technical Matters.

(a) This act shall be liberally construed and applied in order to fully promote its underlying purposes.

[continued]."

(d) Section 1861.02 (Proposition 103) of the Insurance Code provides, in pertinent part, as follows:

"Determination of Rates; Good Driver Discount Plan

(a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually

(3) The number of years driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without such approval shall constitute unfair discrimination ... [continued]"

(e) Section 1861.05 (a) (Proposition 103) of the Insurance Code provides:

"No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory. In considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income."

(f) To assist in the formulation of regulations to implement Section 1861.02(a), the Commissioner held public hearings in June, August and November 1989. Prior to the November hearings, the Commissioner appointed a three member Actuarial Advisory Committee, the backgrounds of whose members reflected experience

representing industry, consumer groups and the Department of Insurance. This Committee itself appointed a subcommittee of other experts to assist it in its efforts. The three Committee members each testified during the November hearings as reflected in more detail in the transcripts of such hearings, to which transcripts reference is hereby made for further detail. While these individuals gave much valuable testimony and advice, of particular significance is the following:

(1) All three members recommended that regulations be issued which require a sequential regression analysis of automobile rating factors.

(2) All three members recommended that the regulations provide that the first three rating factors must be those required in Section 1861.02(a) (the "Mandated Factors"), to wit:

- (a) the insured's driving safety record;
- (b) the number of miles driven annually by the insured;
- (c) the insured's number of years driving experience;

All three members further recommended that the regulations require rating plans to analyze these Mandated Factors in the order listed in the statute by a sequential regression analysis methodology.

(3) All three members recommended that the regulations then provide that insurers may utilize additional optional factors from a list (the "Optional Factors") to be provided in the regulations. While the three members did not agree on all the Optional Factors that should be included, they did agree upon most and also agreed that such Optional Factors as were included and then selected by insurers must be utilized after the three Mandated Factors and then, to the extent utilized, the Optional Factors should also be applied by use of a sequential regression analysis methodology.

(4) All three members agreed that a cost-based pricing system which sets pure premium based upon the actual relationship (as determined actuarially on historic data) of a particular factor to the risk of loss is normally the appropriate approach to setting premiums.

(5) All three members agreed that the three Mandated

Factors required by Proposition 103 were not necessarily those which would be the three dominant factors if the ratings were made purely on a cost-based approach. Further, all three members agreed that it was quite possible that one or more of the Optional Factors would, on a cost-based approach, warrant a greater "weight" than any one or even all three combined of the three Mandated Factors. Based upon the evidence adduced in the hearings, the Commissioner finds this result is very likely.

(6) All three members agreed that the use of "territory" as a factor was at least in part a surrogate for other factors such as items 16 through 25 of the Optional Factors, but all three members also recommended that, in addition to separately listing these included factors, the use of "territory" as a factor should be continued provided it was utilized in a sequential regression analysis and used only after the three Mandated Factors.

(7) All three members agreed that all factors including 16 through 25 of the Optional Factors and "territory", were factors which legitimately bear a substantial relationship to the risk of loss. Based upon their testimony, the Commissioner finds that even if the sequential regression analysis is utilized (and even if the Mandated Factors are considered first) it is very likely, probably to the point of certainty, that these Optional Factors would, on a pure cost-based system which bases premium on the risk of loss, account for a greater proportion of the risk of loss than would any one of or possibly all three Mandated Factors.

(8) The Committee was divided on the issue as to how to approach the rating system given the foregoing factors and given the provisions of Proposition 103. There are two views:

(a) One view is that a pure cost-based system should be used as much as possible and that other than utilizing the three Mandated Factors in the order mandated by Proposition 103, the remaining factors utilized should be used on a cost-based approach and the premiums charged should be allocated based upon the portion of the pure premium justified by risk of loss from the

application of the factors used;

(b) The other view is that Proposition 103 requires that the results reached as a result of the cost-based approach should be "tempered" in the sense that, regardless of the level of pure premium justified by a particular factor based upon the risk of loss from that factor, the cost-based indications must be overridden so that no Optional Factor may be permitted to account for more of the premium than the third Mandatory Factor. Then, the third Mandatory Factor could not be permitted to account for more than the second Mandatory Factor and the second Mandatory Factor could not be permitted to account for more than the First Mandatory Factor. This would artificially strengthen the first three factors and give them more weight than they would otherwise be given in a cost-based system.

(9) The Committee members agreed that if the cost-based approach is utilized, even with the sequential regression analysis methodology, then legitimate Optional Factors will likely call for premium rates in certain urban areas, such as the Los Angeles inner city area, to be higher than those in most non-urban areas. The Committee members also agreed that if the cost-based approach is "tempered" by overriding the "weight" for the Optional Factors, then premium rates in non-urban areas will likely increase while rates in certain inner city areas will likely decrease.

(g) The above-referenced and other applicable provisions of Proposition 103 conflict with one another in several respects. Proposition 103 was voted on as a measure to lower insurance rates, not to raise them. Proposition 103 was intended to avoid arbitrary rates, not to impose them. Proposition 103 was intended to encourage competition, not discourage it. Proposition 103 was supposed to avoid excessive rates, not impose them. Proposition 103 was intended to avoid unfair discrimination, not to encourage it. Proposition 103 was intended to make insurance more available, not less available.

(h) Proposition 103 forbids rates which are "excessive, inadequate, unfairly discriminatory or otherwise in violation of this Chapter." It would follow that any rate which raises rates, creates arbitrary rates, discourages competition, allows excessive or inadequate rates, makes insurance less available or

allows unfair discrimination would fall within this statutory prohibition.

(i) Despite the various statutory conflicts, the Commissioner has no power to declare any provision of Proposition 103 to be ineffective, and she views it as being her duty to implement Proposition 103 in accordance with its terms and to harmonize conflicting provisions to the extent possible. It is very difficult to harmonize all conflicts. For example, Section 1861.02(a) mandates that the three listed factors be utilized in decreasing order of importance. Based upon the statutory language, as well as the evidence adduced during the hearings, the Commissioner finds she must interpret these requirements such that the three Mandated Factors must be given the most weight, regardless of whether the result would otherwise be viewed as discriminatory, arbitrary or inadequate based upon actuarial science and a cost-based approach because the statutory language states that this must be done.

As a result, the Commissioner has determined that she cannot implement Proposition 103 according to its terms unless she "tempers" the rating factors to provide that no Optional Factor may be given more weight than any of the Mandatory Factors. In this regard the Commissioner believes she must balance the potential degree of arbitrariness or inadequacy against the statutory aims and bear in mind that she is required to construe the statutory language liberally in order to promote the underlying purposes. She cannot carry out the statutory mandates unless she "tempers." Therefore she has done so.

(j) In addition to the matters discussed in (i) above, there is a related serious problem associated with Proposition 103. This problem arises because of the fact that if the Commissioner "tempers" the cost-based methodology, then rates in non-urban areas will likely rise. The degree of increase is not yet known, but the Commissioner believes it will be significant. Under this scenario there will be arbitrary rates, discriminatory rates and excessive rates as to these Californians because their rates will be higher than is called for by the pure premium that would be established by the actual risk of loss resulting from the rating factors that would, absent Proposition 103, be applied to them. Thus, they would be required arbitrarily to subsidize other citizens' rates in a manner which the Commissioner believes unfairly discriminates against them. Considering the fact that the promoters of Proposition 103 promised lower rates and the fact that the stated purpose of Proposition 103 is to lower rates, but faced with the fact that the literal implementation of Proposition 103 will in all probability actually raise rates for many Californians, the Commissioner is faced with a serious conflict in Proposition 103.

To reiterate, Proposition 103 forbids arbitrary rates, yet requires the arbitrary strengthening of rating factors which, on a pure premium basis, would not be given greater weight than other factors. The Commissioner cannot, however, comply with the statutory mandates unless she "tempers" the rating factors. If she "tempers" the rating factors, rates for many Californians will very likely actually increase and this result would be precisely the opposite of what the promoters and Proposition 103 promised it would accomplish. Thus, if the Commissioner "tempers", as she feels she is required to do, then she finds that she can only harmonize the provisions of Proposition 103 which call for lower, not higher rates, if she also forbids substantial rate increases as a result of such "tempering."

(k) Although, all three members of the Actuarial Advisory Committee view "territory" as a valid rating factor, the Commissioner finds that the benefits of using such factor in addition to those related rating factors which are Optional Factors are outweighed by the public resistance to "territory" as a simple "zip code" approach and to the potential for misuse of this particular factor by insurers. Therefore, "territory" as such has not been included on the list of permissible factors and it may not be utilized as a separate factor. The Commissioner has also determined that "Age" "Gender" and "Marital status" shall be excluded from the list.

(l) The Commissioner finds that the current complexities and the inevitable continuing problems associated with the implementation of Proposition 103 constitute an emergency and that it is essential that she maintain the status quo for a reasonable interim period within which insurers are to implement these Regulations. Absent a maintenance of the status quo there will be a disruption in the insurance marketplace and injury to the public. The Commissioner also finds that it is essential to the public welfare that she establish interim rates as provided in Section 2632.18, below.

That certain Order Upon Stipulation entered on October 18, 1989 in Case No. 362473 in the Sacramento Superior Court specifies time periods for implementation of these regulations after they become effective. These regulations become effective immediately (See Section 2632.18 below) and the time periods specified in said Order Upon Stipulation begin to run from that time. The provisions of Section 2632.18 which provide for the Interim Period are calculated with the intent of providing the stipulated time periods.

NOTE: Reference: Sections 1861.02(a) and (b), 1861.025 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code, and

Article 2. Definitions.

Section 2632.2. Rating Factors.

The term "rating factor" is defined as any factor used by an insurer which establishes or affects the rates or premiums chargeable for a policy of automobile insurance and which pertain to the characteristics or experience, whether past or present, of the insured. The term "rating factor" does not pertain to the types or limits of coverage or deductibles.

NOTE: Reference: Section 1861.02(a) of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.3. Rating Plan.

As used in this Subchapter, the term "rating plan" means the schedule of rating factors and their order of analysis applicable in the development of the premium charged for a policy of automobile insurance.

NOTE: Reference: Section 1861.02 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.4. Automobile Insurance.

The term "automobile insurance" as used in this Subchapter means all private passenger automobile insurance as defined in Section 660(a) of the California Insurance Code.

NOTE: Reference: Section 1861.02 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Article 3. Rating Factors.

Section 2632.5. Use of Rating Factors.

No insurer shall use a rating factor which is not set forth in Section 2632.6 of this Subchapter and no insurer shall use a rating factor which does not bear a substantial relationship to the risk of loss. The relationship to the risk of loss shall be determined solely from the insurer's own loss experience and data, provided that an insurer may also use data maintained by the Data Bank as set forth in Section 2632.15. Further, no insurer may adopt any rating factor based in whole or in part upon the race, language, color, religion, national origin, ancestry or political affiliation of any person.

NOTE: Reference: Sections 1861.02(a) and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.6. Rating Factors.

(a) Every insurer offering or issuing a policy of automobile insurance shall establish a rating plan for the calculation of rates and premiums. The rating plan shall be determined in accordance with Subsections (b) and (c) of this Section and it shall comply with the good driver discount requirements of California Insurance Code Section 1861.02(b) and all other statutes providing discounts in automobile insurance rates and premiums.

(b) An insurer's rating plan, and all rates and premiums used in accordance therewith, must utilize the following rating factors (the "Mandated Factors"):

- (1) the insured's driving safety record. The term "driving safety record" means the following: (A) the public record of traffic violation convictions available from the California Department of Motor Vehicles for the preceding three years, together with similar public records of traffic violation convictions in the preceding three years that are available from other jurisdictions; and (B) the at-fault accidents experienced by the named insured and by any other principal or occasional driver of the insured vehicle;
- (2) the number of miles driven annually by the insured. The term "number of miles driven annually" means the estimated annual mileage for the insured vehicle during the 12 month period following the

inception of the policy;

(3) the insured's number of years of driving experience. The term "number of years of driving experience" means the lowest number of years experience which any principal or occasional driver of the insured vehicle has been licensed to drive in any jurisdiction.

(c) In addition to the rating factors set forth in Subsection (b), an insurer's rating plan may utilize any of the following optional rating factors (the "Optional Factors"):

- (4) type of vehicle;
- (5) make and model of vehicle;
- (6) cost of repair or replacement of vehicle as measured by age or model year, price, cost, or value;
- (7) design characteristics of the vehicle related to injury prevention, damageability or repairability;
- (8) vehicle characteristics, including engine size, safety and protective devices, and theft deterrent devices;
- (9) vehicle performance capabilities including alterations made subsequent to original manufacture;
- (10) type of use of vehicle (personal, business, farm, commercial, etc);
- (11) usage patterns of the vehicle, including daily or weekly commuting;
- (12) multi-car households;
- (13) completion of driver training or defensive driving courses;
- (14) persistency;
- (15) primary or occasional usage of the vehicle;
- (16) theft rates;
- (17) average repair garage labor rates;
- (18) average medical and hospital costs;
- (19) average wage and income levels;
- (20) litigation rates;
- (21) population density;
- (22) vehicle density;
- (23) accident/claims frequency, including injury and fatality rates;
- (24) number of uninsured vehicles;
- (25) average claims cost.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.7. Adoption of Rating Plan.

Any rating plan utilized by an insurer, and the effect that each rating factor in said rating plan has on individual rates, must be established by a sequential regression analysis of all rating factors selected for use by the insurer. The sequential regression analysis must weight and analyze the rating factors in the following order:

- (1) the insured's driving safety record;
- (2) the number of miles driven annually by the insured;
- (3) the insured's number of years of driving experience;
- (4) any and all optional factors used by the insurer in accordance with Subsection 2632.6(c). The order of analysis of the optional factors shall be determined by the insurer, subject to the approval of the Commissioner.

NOTE: Reference: Section 1861.02 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.8. Weight and Effect of Rating Factors on Premium.

(a) The rating factor set forth in Subsection 2632.6(b)(2) (the number of miles driven annually by the insured) must be weighted so that it shall not account for a greater dollar amount of premium for any policy of automobile insurance than the dollar amount of premium accounted for by the rating factor set forth in Subsection 2632.6(b)(1) (the insured's driving safety record);

(b) The rating factor set forth in Subsection 2632.6(b)(3) (the insured's number of years of driving experience) must be weighted so that it shall not account for a greater dollar amount of premium for any policy of automobile insurance than the dollar amount of premium accounted for by the rating factor set forth in Subsection 2632.6(b)(2) (the number of miles driven annually by the insured);

(c) Each optional rating factor set forth in Subsection 2632.6(c) which is utilized by an insurer in a rating plan adopted under Section 2632.7 must be weighted so that it shall not account for a greater dollar amount of premium for any policy of automobile insurance than the dollar amount of premium accounted for by the rating factor set forth in Subsection 2632.6(b)(3) (the insured's number of years of driving experience).

(d) Notwithstanding the effect upon premium that any rating

plan adopted in accordance with this Subchapter may otherwise have, no premium charged by an insurer to any insured for the issuance or renewal of a policy shall be increased over the premium that would have been charged to such insured by application of all of the mandatory and optional rating factors set out in Section 2632.6(b) (1), (2), (3) and 2632.6(c) (4) through (25) for which data is available, with each mandatory and optional rating factor receiving the weight and effect on rates and premiums as determined solely by a sequential regression analysis. Further, in no event may any such rate charged to any such insured, as determined pursuant to the foregoing method, exceed the rate and premium that was charged or would have been charged to such individual or to individuals similarly situated in the immediately preceding calendar year, plus a percentage increase over the rate and premium chargeable in the immediately preceding calendar year that is equivalent to the percentage increase in the Consumer Price Index over the immediately preceding calendar year. Provided further that the premium charged to an individual may be raised in accordance with changes in the individual's driving safety record.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921, 12926, California Insurance Code and Calfarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989).

Section 2632.9. Rate Levels Approved For Use.

(a) Until the adoption and approval of a new rating plan in accordance with these Regulations, no rate, premium or other charge for a policy or renewal of a policy of automobile insurance which is established by an insurer utilizing the rating factors set forth in Section 2632.6(b) (1) (2) (3) and 2632.6(c) (4) through (25), or which is established utilizing any other rating factors or plans as may be permitted prior to the adoption of a new rating plan in accordance with these Regulations, shall exceed the rate or premium that was in effect for such a policy or substantially similar policy as of October 3, 1989.

(b) If an insurer is able to demonstrate in accordance with the standards and methods determined as a result of the hearings in the case entitled In The Matters of Various Rate Increase Applications and With Respect to Certain Issues Related To The Control, Review and Approval of Insurance Rates Pursuant To Insurance Codes Sections 1861.01(a) and 1861.05 and Related Laws, California Department of Insurance File No. REB - 1002 (Consolidated), that the rates, premiums and other charges that are to be utilized in accordance with Subsection (a) were

confiscatory as applied, then, either in the new rating plan submitted by the insurer in accordance with these Regulations or at a later time as determined by the Commissioner on application of the insurer, the insurer shall be permitted to recoup the "Deficiency Amount." "Deficiency Amount" means the shortfall, if any, between the Actual Return of the insurers and the minimum Allowable Return of the insurers, as defined in the Notice of the above-referenced hearing.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 1861.05, 12921 and 12926 of the California Insurance Code and Calfarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989).

Section 2632.10. Approval of Rating Plan.

Subject to the provisions of Section 2632.18, below, no insurer may hereafter use a rating plan which does not comply with the provisions of Sections 2632.5, 2632.6, 2632.7, 2632.8, 2632.9, or which does not comply with all other provisions of these Regulations and with the provisions of Article 10, Chapter 9, Part 2, Division 1 of the California Insurance Code. No insurer may use a rating plan or charge or collect any premium or other charge based upon a rating plan which has not been approved by the Commissioner. No insurer may offer, sell or renew a policy of automobile insurance, or collect a premium or other charge for a policy of automobile insurance which is not calculated in accordance with a rating plan which complies with the provisions of Sections 2632.5, 2632.6, 2632.7, 2632.8, 2632.9 and with all other provisions of these Regulations and with the provisions of Article 10, Chapter 9, Part 2, Division 1 of the California Insurance Code. Subject only to the provisions of Section 2632.18, below, no previously approved rating plan, and no rate, premium or other charge calculated upon the basis of any previously approved rating plan may continue to be used, charged or collected, unless such rating plan complies with the above-referenced provisions of these Regulations and the provisions of Article 10, Chapter 9, Part 2, Division 1 of the California Insurance Code.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.11. Submission of Rating Plan for Approval.

(a) Every insurer offering or selling a policy of automobile insurance shall submit a rating plan to the Insurance Commissioner for review and approval within 60 days of the Effective Date of these Regulations. Each such rating plan must provide that the plan shall be fully implemented not later than 90 days after approval of the plan by the Insurance Commissioner.

(b) The rating plan submitted for approval shall contain a completed application in accordance with the regulations set forth in Title 10, Chapter 5, Subchapter 4.5 of the California Code of Regulations and shall contain a sequential regression analysis in support of the plan. The plan shall also show the weight and effect of each rating factor used on premium.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.12. Review and Approval of Rating Plan by Commissioner.

(a) No rating plan may be utilized or may remain in effect which has not first been approved by the Insurance Commissioner after the Effective Date hereof and in accordance with the procedures set out in these Regulations and Article 10, Chapter 9, Part 2, Division 1 of the California Insurance Code.

(b) No rating plan shall be approved by the Insurance Commissioner which contains rating factors which are not authorized by these Regulations and which do not bear a substantial relationship to the risk of loss.

(c) The Insurance Commissioner shall approve or reject a rating plan submitted by an insurer within the time set forth in Insurance Code Section 1861.05 and all applicable regulations.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Article 4. Good Driver Discount Policy.

Section 2632.13. Good Driver Discount.

(a) A good driver discount shall be determined by reference to the driving safety record and three years driving experience of the insured and each principal and occasional driver of the insured vehicle.

(b) Every insurer offering a policy of automobile insurance shall set its rates so that a good driver, as defined in Section 1861.025 of the California Insurance Code, shall be charged a rate that is at least 20 percent less than the lowest rate available to a comparable driver who is not a good driver.

NOTE: Reference: Sections 1861.02(a) and (b) and 1861.025 of the California Insurance Code. Authority: Sections 1861.02, 1861.025, 12921 and 12926 of the California Insurance Code.

Section 2632.14. Availability of Good Driver Discount Policies.

(a) Every insurer shall maintain an agency and adjuster force sufficiently adequate and responsible to make its insurance products available to the public and to service its policyholders. This requirement may be met by an "in house" force or by adequate arrangements made by insurers with independent agents or adjusters.

(b) Within 60 days of the effective date of this Regulation, every insurer shall submit to the Insurance Commissioner for review and approval a plan for assuring the accessibility of the insurer's good driver discount policies to all good drivers. The plan shall include provisions for at least the following: advertising the availability of good driver discount policies, instructions to agents for the offering of such policies, solicitation of new business, accessibility to all persons by telephone (including 800 numbers), number and accessibility and location of agents, advertising of location and means of contacting agents, customer service standards including those relating to policy issuance and delivery and claims reporting and adjustment. Any reason for omission of any of the foregoing provisions shall be stated in the plan and the insurer's alternatives to any omitted provision shall be identified.

(c) Within 60 days of the effective date of this Regulation, every insurer shall submit the following to the Insurance Commissioner:

(1) Each and every procedure and methodology which implements §1861.02(b)(1);

(2) Each and every advertisement, notice, bulletin, directive, memorandum or other writing pertaining to the insurer's implementation of §1861.02(b)(1);

(3) Evidence of the total number of policies issued, renewed, cancelled and in force by such insurer since the date of its most recent rate application or September 1, 1989 if later than such application. This information shall be in the aggregate and such listing shall be by "zip code" or "territory."

(d) Within 60 days of the effective date of this Regulation, any insurer claiming the applicability of Insurance Code §1861.02(b)(3) or §11628 shall file a statement with the Commissioner setting forth the basis for such claim in lieu of requirements of Subsections 2632.14(a) and (b) above.

NOTE: Reference: Sections 1861.02(b) and 11628 of the California Insurance Code. Authority: Sections 1861.02, 1861.025, 12921 and 12926 of the California Insurance Code.

Article 5. Data Bank.

Section 2632.15. Collection of Historical Loss Data.

(a) The Commissioner shall designate an organization to act as a data bank (the "Data Bank") which shall be authorized to receive historical loss data from insurers for the purpose of compiling such data and for the purpose of providing actuarial analysis of such historical loss data to insurers. The actuarial analysis of the historical loss data may be used by an insurer in the formulation of its rating plan.

(b) An insurer's participation in the providing of historical loss data to the Data Bank and an insurer's use of the Data Bank's actuarial analyses of such data shall be voluntary. An insurer participating in providing historical loss data to the Data Bank shall be known as a "Data Bank Participant."

NOTE: Reference: Section 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Section 2632.16. Designation of Organization.

Pending study by the Commissioner of the feasibility of the establishment of a permanent organization to perform the collection and analysis of historical loss data as set forth in Section 2632.14, the Commissioner hereby designates Insurance Services Offices, Inc. as the Data Bank that may collect, analyze, and disseminate historical loss data.

NOTE: Reference: Section 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code.

Article 6. Emergency and Effective Date.

Section 2632.17. Emergency.

The Proposition 103 implementation process and its various complexities and inevitable problems combine to constitute an emergency situation in which it is necessary, among other things,

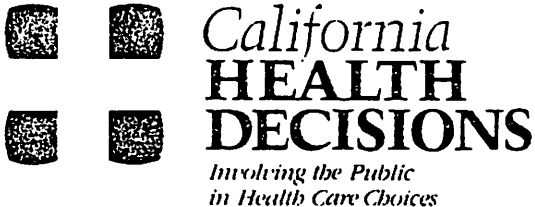
to set Interim Rates in order to avoid disruption of the marketplace and injury to the public and to maintain the rating status quo for an Interim Period in order to permit a reasonable and orderly period within which to implemet these Regulations.

NOTE: Reference: Section 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code and Calfarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989).

Section 2632.18. Effective Date and Interim Rates.

The Regulations set forth in this Subchapter are effective immediately (the "Effective Date"); provided, however that insurers may for a period of 180 days from the Effective Date (the "Interim Period"), temporarily continue to use the rates, premiums and other charges and rating plans that were in place and were actually implemented on or before October 3, 1989 such rates, premiums and other charges being hereby established as "Interim Rates" by the Commissioner; and provided further that, during such Interim Period, no such Interim Rate shall for a Good Driver exceed the amount of the rates, premiums or other charges actually in force by such insurer as of October 3, 1989. Further, no Interim Rate for an individual who is not a Good Driver shall exceed the rates, premiums or other charges actually in force by such insurer as of October 3, 1989 for similarly situated individuals who do not qualify for the Good Driver Discount.

NOTE: Reference: Sections 1861.02 and 1861.05 of the California Insurance Code. Authority: Sections 1861.02, 1861.05, 12921 and 12926 of the California Insurance Code and Calfarm Insurance Company v. Deukmejian, 48 Cal.3d 805 (1989).



CALIFORNIA HEALTH DECISIONS OVERVIEW

California Health Decisions is a private nonprofit educational organization dedicated to involving the public as full partners in the health care decision-making process. Since our inception in 1985, we have conducted more than 300 public meetings in Orange County involving over 11,000 concerned people. Attendees have addressed complex policy questions such as how we should use life-prolonging medical technology, whether or not everyone should have access to health care, and how scarce resources should be allocated. During these meetings, hundreds of recommendations were generated. At our first Health Care Parliament in September 1985, over 200 community leaders prioritized those recommendations and organized four task forces of volunteers to work towards their implementation.

Hundreds of volunteers have participated in task force-related activities since. These activities include three series of educational forums on "Health Care Abroad," "Maintaining Control Over Your Own Health Care," and--our most recent series--"The Ethics and Economics of Health Care Rationing."

We have designed and are conducting an ongoing series of workshops on the Durable Power of Attorney for Health Care (DPAHC) for health professionals, businesses, and the public. This legal document allows an individual to designate someone to speak for him or her regarding medical treatment should the individual become unable to do so in a critical health care situation. Six thousand people have participated in DPAHC workshops in 1988-89 and we expect to double that number in 1989-90.

Locally and statewide, we have organized coalitions of health providers, payors, businesses, and consumers to promote the DPAHC with the goal of distributing 2 million documents by January 1995.

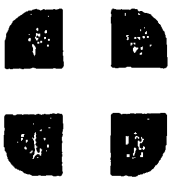
With successful CHD projects underway in Sacramento and West Los Angeles, the Board of Directors is actively involved in designing and promoting our expansion throughout the state. By January 1995, we expect to have established CHD programs and activities in the following areas: Orange and Los Angeles counties, San Francisco, Sacramento, and the North Bay area.

All CHD activities are directed by concerns raised during our public meetings, and include broad-based coalition-building and educational programs designed to alert the general public and its policymakers to those concerns. Two recent examples include task force and community action in Orange County (1) increasing funding for prenatal care, resulting in an additional county allocation for 500 slots for pregnant women in the 1987-88 and 1988-89 budgets and (2) helping insure that a 1988 \$6.1 million state block grant was spent on county health and social programs. Our most recent public educational efforts are focused on the intent and subsequent allocation of funds raised from Proposition 99 - the Tobacco Tax, and the allocation of county health care dollars for 1989-90.

California Health Decisions provides a forum for individuals and organizations who wish to (1) learn more about the challenges facing our health care system and (2) work together to bring about positive changes in the policies and practices that govern it. We welcome your involvement.

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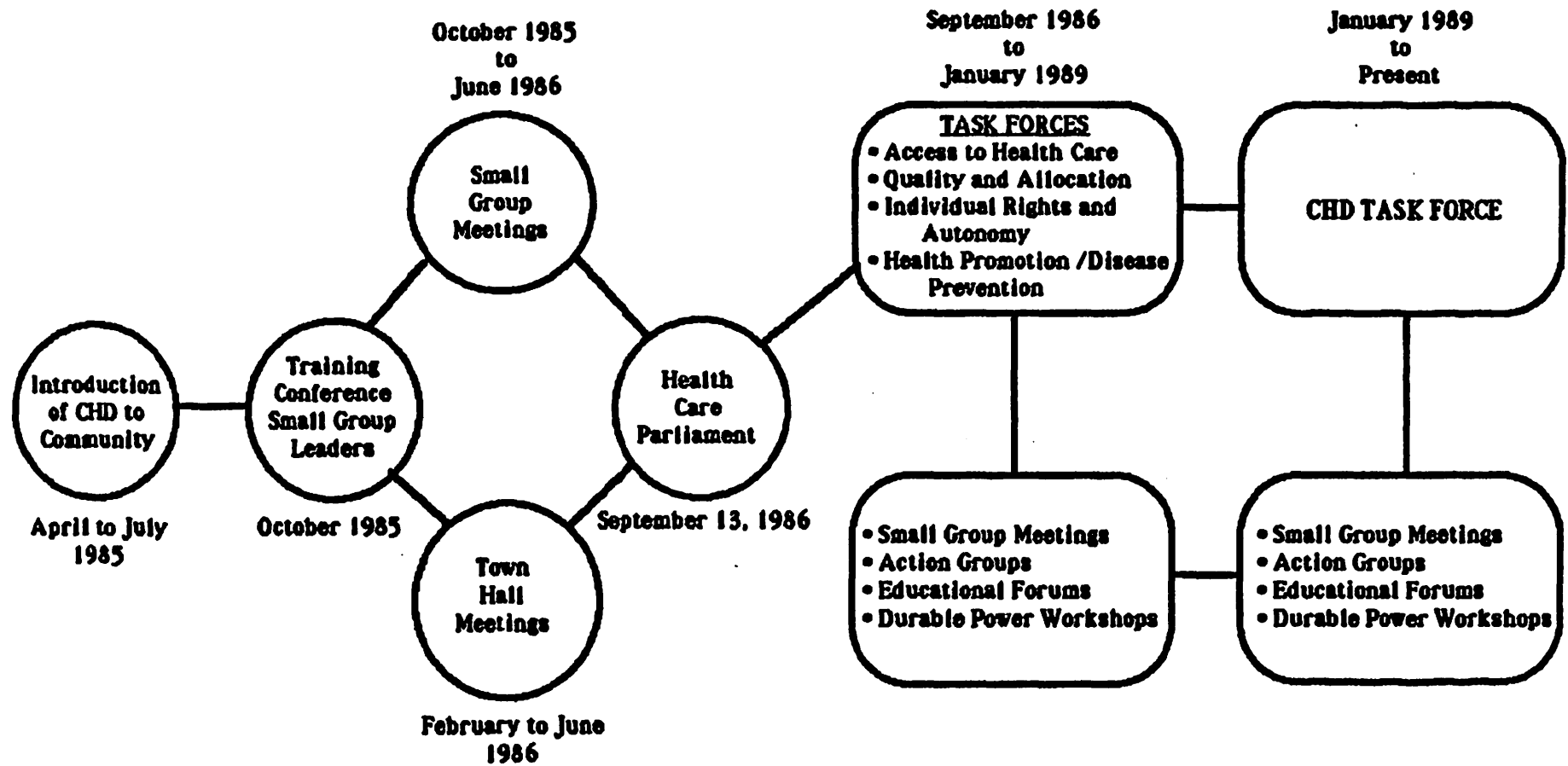


California HEALTH DECISIONS

Involving the Public
in Health Care Choices

505 South Main Street, Suite 400
Orange, CA 92668

CALIFORNIA HEALTH DECISIONS PROCESS



You, Your Physician and the Durable Power

Richard J. Moldawsky, M.D.

All of us have been in the awkward and stressful role of being a patient, and although we know that honest and open communication between the physician, other members of the health care team and ourselves is the cornerstone of a successful partnership, there are factors that get in the way and, ironically, keep important issues from being addressed. Some of these factors lie with the patient, some with the physicians, and still others reflect how society shapes our expectations about the way doctors and patients are "supposed" to behave with each other.

More recently, such attitudes have made it more acceptable to discuss sexuality, substance abuse, family problems and mental illness in this context, but the essential right to express one's wishes regarding treatment (or no treatment) at a time of current or future incapacity is sometimes abdicated by those who feel too uncomfortable raising such a topic with the physician if the physician hasn't done so already. The consequences of this avoidance can be catastrophic for the patient, the family and even for the physician and any involved facility. The goal of this article is to help individuals discuss such issues with their doctors.

The starting point is the inescapable fact that you and only you can be responsible for your health care. With this responsibility comes a power you exercise in choosing a physician (or other healer, if any), selecting a hospital, how well you adhere to any treatment plan, or whether you seek medical care at all. Understandable though it may be, it is counterproductive to let your fears of the patient-doctor encounter take over. Most people look to their doctor for approval, or at least not disapproval, and worry

about being seen as stupid ("I didn't understand his explanation of what was wrong, but I didn't ask him to explain it differently.") A patient may complain ("I only told her about one small problem, not what is really bothering me.") or challenge ("I've been reading about my illness, and he said some things I know are wrong, but I didn't want to make him feel bad, get defensive or angry with me.") Many people are concerned, not entirely without justification, that an offended physician may somehow punish or retaliate against them. Most doctors' moral standards are above such unethical behavior, but, just like anyone else, a doctor has insecurities and "blind spots" that affect his or her conduct.

But the patient is still the "captain of the team" and needs to be an informed consumer of the service he or she is paying for. Doctors are increasingly sensitive to this fact and more open to a collaborative teamwork approach rather than the traditional authoritarian parent-to-passive-patient model. Not so incidentally, the legal system is also more insistent on the former as well.

The activities of California Health Decisions over the past five years demonstrate how strongly people feel about remaining in control of their health care decisions. The Durable Power of Attorney for Health Care (DPAHC) is well-known to regular readers of *CHD Update* as an effective means of retaining such autonomy through designation of another person who can make health care decisions when the individual cannot do so for himself or herself. Clearly, if you complete a DPAHC, you should inform your physician and give him or her a copy. Remember that many physicians remain unaware of the DPAHC, and others, while aware of it, may not be able

or willing to abide by the stipulations you assert. In the first instance, you will find yourself educating your doctor and strengthening the alliance; in the second, unresolvable differences may result in a doctor's respectful withdrawal from your care or in your decision to find a new doctor.

As a consequence of growing older, developing a major illness or other life changes, you may have decided to fill out a DPAHC, but for a variety of reasons, some of which are discussed above, you may feel uneasy raising the topic with your doctor. Obviously, if you are otherwise willing to discuss it and your physician supportively broaches the topic, things will go smoothly. Not all doctors are equally comfortable or skilled in discussing such emotional issues.

But this is your life, your health care, your right and your responsibility. If you already have a good enough rapport, the conversation will go surprisingly well. If the relationship is somewhat shaky, and the conversation still must take place, there will be no "right time" for it, but these pointers will help make it happen.

The conversation will take some preparation and time. When your doctor is breezing out the door is not the time to say, "By the way, I wanted to . . ." Call ahead to let him or her know that you have a *specific* wish to discuss something. Ask to do so in the office, not in a chilly examining room while you're half-dressed. Be matter-of-fact and straightforward; your wishes are valid and you don't "owe" an explanation or justification unless you wish to provide one, but know that your physician will want to be sure you understand the pros and cons of whatever you have decided. Don't forget that sharing your DPAHC with your doctor

Your and Your Physician

from page 1

helps him or her, too, and your discussion will probably be very much appreciated and well-received.

It's difficult enough to think about being so ill that we can't express our wishes, let alone to discuss it with someone we fear may not be supportive and accepting. However, when we realize that it can be a crucial step in affirming our value of autonomy and self-determination, completing the DPAHC and discussing it with our doctor becomes less intimidating and more empowering.



Dr. Moldawsky, a psychiatrist, is the senior editor of Update.

CHD thanks the following contributors to Update:

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President: Ellen Severoni

Produced by:



From the President

An exciting and important year lies ahead not only for California Health Decisions but for the state and the country as well. A daily review of the headlines demonstrates how the health care issues we have been exploring over the past five years demand more and more attention from policymakers, providers and all segments of the community. CHD continues to press for public education and input in the ways detailed elsewhere in this issue of Update.

We have assembled an outstanding Board of Directors and Officers for 1989-90. Several have been involved with CHD in a variety of ways over the years, and will be familiar to you.

The Board's new Chairperson is Corinne Bayley of the St. Joseph Health System. She succeeds Dr. Francis Mackey; we are all grateful to Bud for his contributions so far and are glad he'll continue on the Board. Leonard Kattan will be Vice Chairperson and Barbara Talento will serve as Secretary. The Board has honored me by electing me President of California Health Decisions.

Our other Board members are: Harry Bubb, Chairman of the Board of Pacific Mutual Life Insurance Company; Alexander M. Capron of USC; Louis Garfin, who also chairs our Task Force; Jon Gilwee of the Hospital Council of Southern California; Susan MacKinnon, who has also chaired our Public Education Committee; Jim Meuse of the Orange County Employers Health Coalition; Dr. Charles Plows, President-elect of the California Medical Association; Dr. Edward Quilligan, Professor of Obstetrics and Gynecology at UC Irvine; Dr. Dorothy Rasinski of the Long Beach VA Hospital; John Rodriguez, Deputy Director of Medical Care Services for the California Department of Health Services; Thomas R. Testman of Ernst and Young; Samuel J. Tibbitts, Chairman of the Board of UniHealth America; and Peggy Weatherspoon, President of the California Association of Area Agencies on Aging. I'm very excited to be working with such an illustrious, talented and committed group.

We will be very busy this coming year at the local and state levels, resuming our small groups, continuing our DPAHC program and expanding our activities into more areas of California. Your contributions of time, energy and ideas are as valued as ever, but I also want to remind you that now is the perfect time to make a financial donation to CHD using the enclosed envelope. If you have never done so before, please do so now, and if you're a past contributor, I hope you can increase your gift this year. Our dependence on individual contributions can't be overstated.

I could not end this column without special thanks and best wishes to Genie Hill, who has left CHD to pursue other opportunities after having been with us from the very beginning. Most recently, she was Director of our Volunteer Program, but for four years, she accomplished many things for CHD that don't usually get the appropriate recognition. CHD will miss her energy and talent.

Ellen Severoni

CHD Update is interested in your feedback about the newsletter, and we would like to publish letters and other comments about health care issues and your own experiences. Your submissions may be addressed to: Editor, CHD Update, 505 S. Main Street, Suite 400, Orange, CA 92668. Please include your name, address and telephone number.

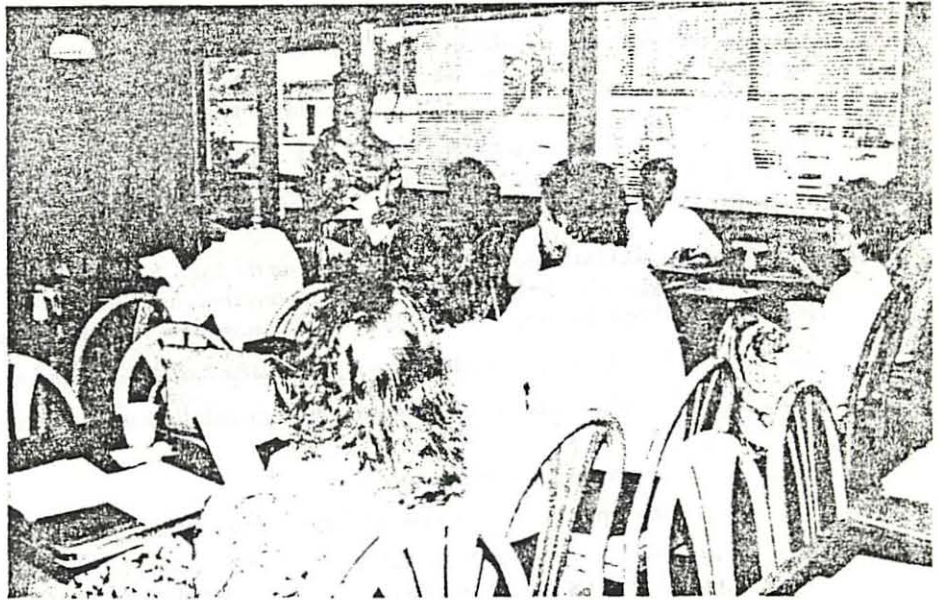
Karcher Employees Weigh Health Care Choices

Terminal illness or serious accident wouldn't normally top the list of favorite office conversation topics. However, the management of Carl Karcher Enterprises (CKE) is actively encouraging benefited employees to consider and talk about the possibility of serious illness or accident, and to plan ahead for health care choices.

California Health Decisions presented a series of workshops on the Durable Power of Attorney for Health Care (DPAHC) to CKE employees, as part of the company's expanded corporate sponsorship. Through workshops at its corporate headquarters in Anaheim and distribution of documents, CKE plans to make DPAHC information available to 5,000 employees and family members this year.

According to Gary Woods, Manager of Compensation and Benefits, CKE offered the workshops to "help employees communicate about health care, and keep power and control in their own hands." The DPAHC "gives employees the opportunity to minimize stress on the family," Woods said, avoiding potential conflict about serious health care issues such as life support. "The financial repercussions of health care in cases of lengthy illness or accident also have to be looked into, or at least considered," Woods said.

Woods said CKE employees were given DPAHC information to advise them of their options in health care, and to "establish peace of mind regarding a sensitive and difficult subject." Attendance at the DPAHC workshops was



CHD Administrative Director Pamela Davidson conducts a DPAHC workshop for Carl Karcher employees.

mandatory, but completing the document is "entirely voluntary," Woods said.

Employee reaction was positive, according to post-workshop surveys indicating that roughly half of those attending the workshops intended to complete a DPAHC soon.

CKE is the first company not directly involved in health care to ask California Health Decisions to develop and implement a formal DPAHC education program for its employees, said Ellen Severoni, CHD President. "Locally, the Pacific Mutal Life Insurance Company and several Orange County hospitals have made DPAHC information and documents available to their staff. It's a

breakthrough when a fast food chain pays attention to ethical questions in health care such as the appropriate use of medical technology, and provides its employees with a way to participate in those decisions," Severoni said.

Severoni also noted that many employers are trying to contain health care costs by boosting employees' share of premiums or scaling down benefits. "Our DPAHC program represents a creative way to have employees participate in lowering health care costs by maintaining more control over their care. Employees and employers alike can contain the cost of unwanted or unnecessary treatment," she said.

Linares Case Focuses Need for Hospital Ethics Committees

Richard J. Moldawsky, M.D.

A myriad of ethical and legal issues were tragically highlighted this year at Rush-Presbyterian St. Luke's Hospital in Chicago, where 16-month-old Samuel Linares had been maintained in an irreversible coma for nine months after swallowing a rubber balloon at a birthday party. The child's physicians agreed that there was no hope of recovery, yet the parents' request that the respirator maintaining his life be disconnected was denied by the hospital, which acted on the advice of its legal counsel. On April 26, the father, holding the nursing staff at bay with a .357 Magnum, disconnected the respirator and the baby died.

One of the initial questions to be answered was whether or not to indict the father for murder. Part of this debate took the form of a statement signed by eighteen nationally prominent experts in bioethics, including CHD Board of Directors member Alexander M. Capron, urging that no indictment be brought. While not condoning Linares' use of a gun, those signing the statement stressed the need for parents, providers and hospitals to develop mechanisms to solve such impasses, specifically citing hospital ethics committees, which the hospital in question did not have. A grand jury voted not to indict Linares.

Although more and more hospitals now have ethics committees, Rush-Presbyterian relies on a Presbyterian minister for guidance in handling ethical questions. Mr. and Mrs. Linares reportedly had been referred to him for counseling, but declined to meet with him. The minister had no other involvement in the case.

There are competing vantage points in thinking about this awesome situation. The hospital, whose public image came under attack, saw the issue as a legal, not an ethical one, in which Illinois law forbade withdrawal (as opposed to with-

continued next page

DURABLE POWER OF ATTORNEY FOR HEALTH CARE®

(California Civil Code Sections 2410-2443)

This is a Durable Power of Attorney for Health Care form. By filling in this form, you can select someone to make health care decisions for you if for some reason you become unable to make those decisions for yourself. A properly completed form provides the best legal protection available to help ensure that your wishes will be respected.

READ THIS FORM CAREFULLY BEFORE FILLING IT OUT. EACH PARAGRAPH IN THE FORM CONTAINS INSTRUCTIONS. IT IS IMPORTANT THAT YOU FOLLOW THESE INSTRUCTIONS SO THAT YOUR WISHES MAY BE CARRIED OUT.

The following checklist is provided to help you fill out this form correctly. You may use this checklist to double check sections you may be unsure of as you fill in the form. You may also use this checklist to help make sure you have completed the form properly. If you have properly completed this form, you should be able to answer yes to each question in the checklist.

- _____ 1. I am a California resident who is at least 18 years old, of sound mind and acting of my own free will.
- _____ 2. The individuals I have selected as my agent and alternate agents to make health care decisions for me are at least 18 years old and are *not*:
- my *treating* health care provider.
 - an employee of my *treating* health care provider, unless the employee is related to me by blood, marriage or adoption.
 - an operator of a community care facility (Community care facilities are sometimes called board and care homes. If you are unsure whether a person you are thinking of selecting operates a community care facility, you should ask that person.)
 - an employee of a community care facility, unless the employee is related to me by blood, marriage or adoption.
- _____ 3. I have talked with the individuals I have selected as my agent and alternate agents and these individuals have agreed to participate. (You may select someone who is not a California resident to act as your agent or alternate agent, but you should consider whether someone who lives far away will be available to make decisions for you if and when that may become necessary.)
- _____ 4. I have read the instructions and completed paragraphs 4, 5, 6, 7, 8, and 9 to reflect my desires.
- _____ 5. I have *signed* and *dated* the form.
- _____ 6. I have either _____ had the form notarized; *or* _____ had the form properly witnessed:
- _____ 1. I have obtained the signatures of two adult witnesses who personally know me.
 - _____ 2. Neither witness is:
 - my agent or alternate agent designated in this form.
 - a health care provider, or the employee of a health care provider.
 - a person who operates or is employed by a community care facility.
 - _____ 3. At least one witness is not related to me by blood, marriage, or adoption, and is not named in my will or so far as I know entitled to any part of my estate when I die.
- _____ 7. I HAVE GIVEN A COPY OF THE COMPLETED FORM TO THOSE PEOPLE INCLUDING MY AGENT, ALTERNATE AGENTS, FAMILY MEMBERS AND DOCTOR, WHO MAY NEED THIS FORM IN CASE AN EMERGENCY REQUIRES A DECISION CONCERNING MY HEALTH CARE.

SPECIAL REQUIREMENTS

- _____ 8. **Patients in Skilled Nursing Facilities.**
If I am a patient in a skilled nursing facility, I have obtained the signature of a patient advocate or ombudsman. (If you are not sure whether you are in a skilled nursing facility, you should ask the people taking care of you.)
- _____ 9. **Conservatees under the Lanterman-Petris-Short Act.**
If I am a conservatee under the Lanterman-Petris-Short Act and want to select my conservator as my agent or alternate agent to make health care decisions, I have obtained a lawyer's certification. (If you are not sure whether the person you wish to select as your agent is your conservator under the Lanterman-Petris-Short Act, you should ask that person.)

If you change your mind about who you would like to make health care decisions for you, or about any of the other statements you have made in this form, you should take all of the following steps: 1. Complete a new form with the changes you desire; 2. Tell everyone who got a copy of the old form that it is no longer valid and ask that copies of the old form be returned to you so you may destroy them; 3. Give copies of the new form to the people who may need the form to carry out your wishes as described above in number 7. If after reading this material you still have unanswered questions, you should talk to your doctor or a lawyer.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

(California Civil Code Sections 2410-2443)

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

1. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE

By this document I intend to create a durable power of attorney by appointing the person designated below to make *health care decisions for me* as allowed by Sections 2410 to 2443, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

2. DESIGNATION OF HEALTH CARE AGENT

(Insert the name and address of the person you wish to designate as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, or (4) a nonrelative employee of an operator of a community care facility.)

I, _____
(insert your name)

do hereby designate and appoint: Name: _____

Address: _____

Telephone Number: _____ as my attorney-in-fact (agent) to make health care decisions for me as authorized in this document.

3. GENERAL STATEMENT OF AUTHORITY GRANTED

If I become incapable of giving informed consent to health care decisions, I hereby grant to my agent full power and authority to make health care decisions for me including the right to consent, refuse consent, or withdraw consent to any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition, and to receive and to consent to the release of medical information, subject to the statement of desires, special provisions and limitations set out in paragraph 4.

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning decisions to withhold or remove life-sustaining treatment. For your convenience, some general statements concerning the withholding and removal of life-sustaining treatment are set out below. If you agree with one of these statements, you may INITIAL that statement. READ ALL OF THESE STATEMENTS CAREFULLY BEFORE YOU SELECT ONE TO INITIAL. You can also write your own statement concerning life-sustaining treatment and/or other matters relating to your health care. BY LAW, YOUR AGENT IS NOT PERMITTED TO CONSENT ON YOUR BEHALF TO ANY OF THE FOLLOWING: COMMITMENT TO OR PLACEMENT IN A MENTAL HEALTH TREATMENT FACILITY, CONVULSIVE TREATMENT, PSYCHOSURGERY, STERILIZATION OR ABORTION. In every other respect, your agent may make health care decisions for you to the same extent you could make them for yourself if you were capable of doing so. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not initial one of the printed statements or write your own statement, your agent will have the broad powers to make health care decisions on your behalf which are set forth in Paragraph 3, except to the extent that there are limits provided by law.)

I do not want my life to be prolonged and I do not want life-sustaining treatment to be provided or continued if the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering and the quality as well as the extent of the possible extension of my life in making decisions concerning life-sustaining treatment.

I want my life to be prolonged and I want life-sustaining treatment to be provided unless I am in a coma which my doctors reasonably believe to be irreversible. Once my doctors have reasonably concluded I am in an irreversible coma, I do not want life-sustaining treatment to be provided or continued.

I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have for recovery or the cost of the procedures.

If this statement reflects your desires, initial here _____.

If this statement reflects your desires, initial here _____.

If this statement reflects your desires, initial here _____.

Other or additional statements or desires, special provisions, or limitations.

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages you must DATE and SIGN EACH PAGE.)

5. CONTRIBUTION OF ANATOMICAL GIFT

(You may choose to make a gift of all or part of your body to a hospital, physician, or medical school for scientific, educational, therapeutic or transplant purposes. Such a gift is allowed by California's Uniform Anatomical Gift Act. If you do not make such a gift, you may authorize your agent to do so, or a member of your family may make a gift unless you give them notice that you do not want a gift made. In the space below you may make a gift yourself or state that you do not want to make a gift. If you do not complete this section, your agent will have the authority to make a gift of all or a part of your body under the Uniform Anatomical Gift Act.)

If either statement reflects your desires, sign on the line next to the statement. You do not have to sign either statement. If you do not sign either statement, your agent and your family will have the authority to make a gift of all or part of your body under the Uniform Anatomical Gift Act.

(_____) Pursuant to the Uniform Anatomical Gift Act, I hereby give, effective upon my death:
(signature)
[] Any needed organ or parts; or
[] The parts or organs listed:

(_____) I do not want to make a gift under the Uniform Anatomical Gift Act, nor do I want my agent or family to do so.
(signature)

6. AUTOPSY AND DISPOSITION OF MY REMAINS

I understand that my agent will be able to authorize an autopsy (an examination of my body after my death to determine the cause of my death) and to direct the disposition of my remains unless I limit that authority in this document. I also understand that my agent or any other person who directs the disposition of my remains must follow any instructions I have given in a written contract for funeral services, my will or by some other method.

(OPTIONAL: If you do not want your agent to be involved in these matters, you should state your desires concerning an autopsy and the person you would like to direct the disposition of your remains. If any of the statements below reflect your desires, sign next to that statement. If none of these statements reflect your desires and you want to limit the authority of your agent to consent to an autopsy and/or to dispose of your remains, you should write your own statement in paragraph 4, above.)

Autopsy

(_____) I hereby consent to an examination of my body after my death to determine the cause of my death.
(signature)

(_____) My agent may not authorize an autopsy.
(signature)

Disposition of Remains

(_____) My agent may not direct the disposition of my remains and I would prefer that _____
(signature) (name and address)

direct the disposition of my remains.

(_____) I have described the way I want my remains disposed of in (circle one):
(signature)
1. A written contract for funeral services with _____
(name of mortuary/cemetery)
2. My will
3. Other: _____

7. DESIGNATION OF ALTERNATE AGENTS

(You are not required to designate any alternate agents but you may do so. Any alternative agent you designate will be able to make the same health care decisions as the agent designated in Paragraph 2, above, in the event that agent is unable or unwilling to act as your agent. Also, if the agent designated in Paragraph 2 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If the person designated in Paragraph 2 as my agent is not available and willing to make a health care decision for me, then I designate the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternative Agent

Name: _____

Address: _____

Telephone Number: _____

B. Second Alternative Agent

Name: _____

Address: _____

Telephone Number: _____

8. DURATION

I understand that this power of attorney will exist for seven years from the date I execute this document unless I establish a shorter time. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent will continue to exist until the time when I become able to make health care decisions for myself.

(Optional) I wish to have this power of attorney end before seven years on the following date: _____.
(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

9. NOMINATION OF CONSERVATOR OF MY PERSON

(A conservator of the person may be appointed for you if a court decides that you are unable properly to provide for your personal needs for physical health, food, clothing or shelter. The appointment of a conservator may affect, or transfer to the conservator your right to control your physical care, including under some circumstances your right to make health care decisions. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 2 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person:

Name: _____

Address: _____

Telephone Number: _____

10. PRIOR DESIGNATIONS REVOKED

I revoke any prior durable power of attorney for health care.

Date and Signature of Principal

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Durable Power of Attorney for Health Care on _____ at
(Date)

_____, _____
(City) (State)

(Signature of Principal)

(THIS POWER OF ATTORNEY WILL NOT BE VALID FOR MAKING HEALTH CARE DECISIONS UNLESS IT IS EITHER: (1) SIGNED BY TWO QUALIFIED ADULT WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA.)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses which appears on the following page.)

State of California)

) ss.

County of _____)

On this _____ day of _____, in the year _____,

before me, _____
(here insert name of notary public)

personally appeared _____
(here insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

(Signature of Notary Public)

STATEMENT OF WITNESSES

(If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: _____ Residence Address: _____

Print Name: _____

Date: _____

Signature: _____ Residence Address: _____

Print Name: _____

Date: _____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: _____

(Optional Second Signature): _____

COPIES

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. YOU SHOULD KEEP THE EXECUTED ORIGINAL DOCUMENT AND GIVE A COPY OF THE EXECUTED ORIGINAL TO YOUR AGENT AND ANY ALTERNATE AGENTS. YOU SHOULD ALSO GIVE A COPY TO YOUR DOCTOR, MEMBERS OF YOUR FAMILY, AND ANY OTHER PEOPLE WHO WOULD BE LIKELY TO NEED A COPY OF THIS FORM TO CARRY OUT YOUR WISHES. PHOTOCOPIES OF THIS DOCUMENT CAN BE RELIED UPON AS THOUGH THEY WERE ORIGINALS.

SPECIAL REQUIREMENTS

(Special additional requirements must be satisfied for this document to be valid if (1) you are a patient in a skilled nursing facility or (2) you are a conservatee under the Lanterman-Petris-Short Act and you are appointing the conservator as your agent to make health care decisions for you. If you are not sure whether you are in a skilled nursing facility, which is a special type of nursing home, ask the facility staff. If you are not sure whether the person you want to choose as your health care agent is your conservator under the Lanterman-Petris-Short Act, ask that person.)

1. If you are a patient in a skilled nursing facility (as defined in Health and Safety Code Section 1250(c)) at least one of the witnesses must be a patient advocate or ombudsman. The patient advocate or ombudsman must sign the witness statement **and** must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and am serving as a witness as required by subdivision (f) of Civil Code 2432.

Signature: _____ Address: _____

Print Name: _____

Date: _____

2. If you are a conservatee under the Lanterman-Petris-Short Act (of Division 5 of the Welfare and Institutions Code) and you wish to designate your conservator as your agent to make health care decisions, you must be represented by legal counsel. Your lawyer must also sign the following statement:

I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney.

Signature: _____ Address: _____

Print Name: _____

Date: _____

**DURABLE POWER OF ATTORNEY FOR
HEALTH CARE
WALLET IDENTIFICATION CARD**

The attached wallet card is provided for the purpose of alerting emergency medical personnel to the existence of a Durable Power of Attorney for Health Care (DPAHC) in the event that you require medical treatment and are unable to verbally inform health care providers that an agent has been appointed to act in your behalf. It is recommended that you complete the card by filling in the indicated names and telephone numbers and carry it with you at all times.

Instructions:

1. On the **front** of the card, print your full name in the space labeled "principal's name."
2. On the **back** of the card, print the names and telephone numbers of the persons you have appointed as your **health care agent** and (first) **alternate agent** in the spaces provided. (Make sure the names and telephone numbers are the same as those listed in your DPAHC form.) Space is also provided on the card to write in the name and telephone number(s) of a third person who has a copy of your DPAHC form. This may be the person you have named as your "second alternate agent" or, if you have not designated a second alternate agent, any other person to whom you have given a copy of your completed form.
3. Carefully tear off the card along the perforated line and place it in a conspicuous place in your wallet or billfold. Be sure to update the information on the card if there is a change in the telephone number(s) of any of the people you have listed on it, or if you subsequently complete a new DPAHC form in which different individuals are designated to act as your agent and/or alternate agent(s).

**IMPORTANT NOTICE TO
EMERGENCY MEDICAL PERSONNEL**

I, _____,

(principal's name)

have executed a DURABLE POWER OF ATTORNEY FOR HEALTH CARE pursuant to California Civil Code §§2410-2443 (or §§2500 et. seq.). If I am unable to make my own health care decisions, my designated agent has the legal authority to make those decisions on my behalf, including decisions concerning life-sustaining treatment. In such an event, one of the persons listed on the reverse of this card who has a copy of my Durable Power of Attorney should be contacted immediately, in the order listed.

(See Reverse)

1. Agent's Name: _____
Work: (____) _____
Home: (____) _____
2. Alternate Agent: _____
Work: (____) _____
Home: (____) _____
3. Other: _____
Work: (____) _____
Home: (____) _____

(See Reverse)



Family Records Organizer

- How to Make a Will
- Veterans Benefits
- Life Insurance
- Social Security Benefits
- Memorial Arrangements
- Personal Assets & Liabilities

compliments of



FOREST LAWN

MEMORIAL PARKS AND MORTUARIES

Information for Newspaper Notice

Husband

Wife

My name as it should appear in the notice _____

My name as it should appear in the notice _____

Current Address (indicate city, state and number of years) _____

Current Address (indicate city, state and number of years) _____

Prior Residence (indicate city, state and number of years) _____

Prior Residence (indicate city, state and number of years) _____

Educated at (schools, degrees, years) _____

Educated at (schools, degrees, years) _____

Occupation _____ Years _____

Occupation _____ Years _____

Last Place of Employment _____

Last Place of Employment _____

Address _____

Address _____

Public Offices Held (city, state) _____

Public Offices Held (city, state) _____

Military Citations _____

Military Citations _____

Lodges, Clubs, Associations (indicate offices held) _____

Lodges, Clubs, Associations (indicate offices held) _____

Your Local Newspaper _____

Your Local Newspaper _____

Personal History

Press hard with ball point pen.

This information is required to complete a California Death Certificate

Name _____ Birthdate _____
First Middle Last

Address _____
Street City State County Zip

Sex _____ Race/Ethnicity _____ Birthplace (City/State & Country) _____

Country of Citizenship _____ Social Security No. _____ Marital Status _____

Spouse's Name _____ Spouse's Occupation _____
(if wife, enter Maiden name)

Your Occupation _____ Years in Occupation _____

Name of Employer _____ Kind of Business _____

Branch of Military Service _____ Serial No. _____ Dates of Service _____

Resident of California Since _____ City _____ County _____
(Date) (Date) (Date)

Father's Name and Birthplace _____

Mother's Maiden Name and Birthplace _____

Immediate Family and Closest Friends

Name	Relationship	Address City/State/Zip	Telephone
_____	_____	_____	() _____
_____	_____	_____	() _____
_____	_____	_____	() _____
_____	_____	_____	() _____
_____	_____	_____	() _____
_____	_____	_____	() _____

Preference for Funeral Service

Forest Lawn Churches:

Glendale _____ Hollywood Hills _____
 Cypress _____ Covina Hills _____ Sunnyside _____

Casket: hardwood cloth covered steel bronze/copper

Bronze Tablet Model No. _____ Burial Vault _____ Flowers _____

Organ Selections Desired _____

Soloist Selections Desired _____

Favorite Passages from Bible or Other Literature _____

Name of Clergy Member or Reader Preferred _____ Phone _____

Church Name _____ Address _____

Lodges or Participating Organizations _____

Newspapers to Notify (Obituaries) _____

Special Wishes _____

In the event of my death, Forest Lawn Mortuary is to take charge, embalm and complete arrangements in accordance with these written instructions.

Husband _____ Date _____ Wife _____ Date _____
 Witness _____ Date _____

Location of Memorial Property _____

COMPLIMENTS OF
PRISCILLA E. KARRATT
 Before Need Counselor
 Forest Lawn Memorial Park
 (818) 241-4151
 (213) 254-3131
 Representative

IN CASE OF MY DEATH PLEASE NOTIFY THE FOLLOWING

FOREST LAWN MORTUARY

- GLENDALE CYPRESS SUNNYSIDE
 - HOLLYWOOD HILLS COVINA HILLS
- This constitutes full and complete authorization for the Forest Lawn Mortuary to take charge of my remains and to proceed with the arrangements of my funeral service.*

Signature _____

Date _____

Forest Lawn Memorial-Parks

NAME _____

- Has selected a family memorial as described below:

- Has a Memorial Record and Guide on permanent file at Forest Lawn

Please sign and date this card on the signature line above. Destroy any older cards. Detach this stub and fold the remainder for your wallet.
SEE OTHER SIDE OF THIS CARD

IN CASE OF ACCIDENT OR DEATH

PLEASE NOTIFY _____

Address _____

Telephone _____ Relation _____

My Name is _____

Address _____

Telephone _____

FOREST LAWN MORTUARIES

GLENDALE

1712 South Glendale Ave., Glendale, California 91205
(213) 254-3131 (618) 241-4151

HOLLYWOOD HILLS

6300 Forest Lawn Drive, Los Angeles, California 90065
(213) 254-7251 (618) 954-1711

CYPRESS

4471 Lincoln Avenue, Cypress, California 92624
(714) 628-3131 (213) 431-2517

COVINA HILLS

21300 Via Verde Drive, Covina, California 91724
(213) 969-3671 (714) 599-1231

SUNNYSIDE

1500 L. San Antonio Drive, Long Beach, California 90807
(213) 424-1631

Please fill in the blank spaces above for your protection. We suggest that you always keep this card in your wallet. We will gladly replace worn or lost cards.

SEE OTHER SIDE OF THIS CARD

FORM 23 REV. 2/69

DID YOU KNOW... YOU WOULD ORDINARILY HAVE TO LOOK AFTER AT LEAST 29 ITEMS OF BUSINESS ON THE WORST DAY OF YOUR LIFE?

NOTIFY

1. The Doctor or Coroner
2. The Funeral Director
3. The Cemetery or Memorial Park
4. Relatives
5. The Minister and Church
6. Friends
7. Employer
8. Organist and Vocalist
9. Insurance Agents
10. Casket Bearers
11. Social and Fraternal Organizations
12. Newspapers

SELECT

13. A Family Memorial
14. Casket
15. Vault
16. Clothing
17. Flowers
18. Music
19. Scripture
20. Time of Service
21. Place of Service
22. Memorial Tablet

ALSO

23. Provide vital statistics about the deceased
24. Prepare and sign necessary papers
25. Secure certified copies of the Death Certificate
26. Arrange gratuity for minister
27. Provide historical data
28. Travel from place to place to make complete arrangements

29 - AND PAY FOR SOME OR ALL OF THE FOLLOWING

- | | |
|-------------------|-----------------------------|
| Illness expenses | Flowers |
| Undertaker | Clothing |
| Family Memorial | Telephone and Telegraph |
| Minister | Memorial Tablet and Flowers |
| Interment Expense | |

COMPLIMENTS OF
PRISCILLA E. KARRATTI
Before Need Counselor
Forest Lawn Memorial Park
(818) 241-4151
(213) 254-3131

Make funeral decisions before you need them

By GENE FELTEN



Felten is a certified financial planner and is president of Gene Felten and Associates Inc. in Glendale. Correspondence may

be addressed to him c/o the firm, 1540 Glenoaks Blvd., Suite 201, Glendale, Ca. 91201.

"The American Way of Death," Jessica Mitford's book that was published over 20 years ago, discussed funeral directors and fostered an image of an industry dominated by greedy salesmen who were well equipped to take advantage of judgment blurred by grief.

Frankly, many funeral directors were justifiably offended by the book since they had been carrying on business in a most professional manner — in many cases for generations.

Nonetheless, for the past 15 years the Federal Trade Commission has worked to develop new rules that are intended to increase competition among funeral directors and reduce confusion for consumers. It is hoped that these new rules will end the questionable, sometimes even unscrupulous, activities described by Mitford. Many industry-sponsored changes already have improved many past practices.

Under the FTC's new rules, funeral directors must provide customers with an itemized list and a complete description of materials. This will enable the buyers to work out a list of their own personal priorities within the limitations of their budget. You can obtain a copy of the FTC rules by writing the Federal Trade Commission, P.O. Box 37078, Washington, D.C. 20013.

The consumer, however, is still very much urged to make funeral plans far in advance of need. This takes the responsibility away from grief-stricken relatives and places it squarely on the person whose tastes and pocketbook must be taken into account.

For most consumers, a funeral

takes third place behind a home and car in major costly purchases made in a lifetime. Many consumer experts contend that it is also the purchase about which individual purchasers know the least and ask the fewest questions.

What should consumers know about funerals?

1. Consumers should compare what they are getting in services and quality between one funeral home and another. Visit the premises to sense the quality, service and attitude of the principals in question. Personnel that find time to be patient with your questions and answer them as completely as possible are exhibiting a quality approach to service. It is almost impossible for a bereaved family to make such an evaluation right after a death occurs.

2. Request an itemized list of services. Don't be satisfied by packages presented as a "final offer." Demand an itemization of every cost likely to be involved in complete funeral preparations. Find out what variations you can make without increasing costs, or even those that might reduce costs.

For instance, in a New York Consumer Protection Board study, 50 percent of the people who requested embalming thought it was required by that state's law. Nineteen percent said the funeral home had told them it was required, which it is not. In the same survey, 21 percent said they had believed that embalming preserves the body "for a long time." It does not, and embalming is usually recommended by the Consumer Board only if the body is to be viewed at the funeral.

Planning ahead does not necessarily mean paying ahead on the cost of the funeral. But it is a good idea to purchase a burial plot in advance. Cemetery plot prices, like most real estate, are increasing annually.

Planning ahead means making some decisions and then passing that information on to others, who will be required to carry out your

wishes. Naturally, you should prepare a written summary of these recommendations, place it where it can be located easily (not in a vault), and communicate to your family the exact location. Such planning can give you a sense of peace and assurance that your personal estate matters are well organized.

RESIDENCE PHONE:
(818) 249-8542

PRISCILLA E. KARRATTI

BEFORE NEED COUNSELOR
CEMETERY PROPERTY SALES

Forest Lawn Memorial-Parks
GLENDALE HOLLYWOOD HILLS
(213) 254-3131 (213) 254-7251
(818) 241-4151 (818) 984-1711

BENEFITS AVAILABLE FOR FUNERAL EXPENSES

SOCIAL SECURITY

1. There's a single, lump-sum payment of \$255.00.
2. Order of eligibility for payment:
 - a. Surviving spouse. May be separated from deceased, but NOT divorced. A divorced spouse is NOT eligible to receive the death benefit.
 - b. Dependent children who meet criteria established by the Social Security Administration. (For specific information on individual cases, contact the Social Security Administration.)
3. Forms for claiming benefits available at all Social Security offices.

Social Security Information Center: (800) 234-5772

VETERANS ADMINISTRATION

1. The Veteran must have an HONORABLE discharge.
2. If Veteran has WARTIME service and was receiving 30% (or more) disability payments from the Veterans Administration at time of death, or Veteran died in a V.A. hospital, or nursing home contracted by a V.A. hospital, his/her survivors are entitled to \$300.00 toward funeral (mortuary) expense plus \$150.00 toward cemetery (interment space) expense. If death occurred in a V.A. facility, Veteran's survivors are also entitled to a \$25.00 transportation cost for remains.
3. To be eligible for the \$150.00 cemetery (interment space) expense only, the Veteran must have served during WARTIME.

WARTIME SERVICE DATES:

Spanish American War - 4/21/1898 to 7/5/1902

World War I - 4/6/1917 to 11/11/1918

World War II - 6/7/1941 to 12/12/1946

Korean Conflict - 6/27/1950 to 1/31/1955

Vietnam - 8/5/1964 to 5/7/1975

5. The V.A. will provide a government marker (for regular ground interment ONLY), or will give survivors \$69.00 towards the purchase of any type of memorial tablet (ground, crypt, niche) from a commercial source.
6. The survivors of service personnel who die while serving on ACTIVE DUTY are entitled to a \$1,100.00 death benefit. The same holds true if death is the immediate (or direct) result of a service-related disability incurred while serving on ACTIVE DUTY.

V.A. - Benefits Information and Assistance - (818) 997-6401
(818) 248-0450
(213) 479-4011

Office location: 11000 Wilshire Boulevard, Los Angeles

1989



Central (213) 384-4131
Westside (213) 277-1370
South Bay (213) 536-0281
San Fernando Valley (818) 780-5611
San Gabriel Valley (818) 570-0781

621 S. Westmoreland Ave., L.A., CA 90005

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James Wood, *Los Angeles*

To: Gwendolyn Horton, Member
L. A. Task Force For
Family Diversity

From: Trevor Grimm
General Counsel

Date: January 25, 1900

Re: Proposed CDD Declaration Re
Additional Occupants Of
Rental Housing

You have requested comments concerning the Task Force's proposal:

"that the Community Development Department of the City of Los Angeles declare it is unlawful...(to evict a tenant)...on the grounds that s/he has violated the provisions of a rental agreement where the violation consists of an increase in the number of occupants due to a decision to cohabit with another, where the other is not a spouse."

Los Angeles Municipal Code Article 5.5, Section 45.52

Under this section, arbitrary discrimination against tenants on the basis of age, parenthood, or pregnancy is already in effect.

Civil Code Section 51, et seq. (Unruh Act)

Under state law, all forms of arbitrary discrimination is already illegal

Comment: The proposal is bad.

The proposed language seems to envision complete freedom on the part of tenants to "increase the number of occupants", i.e. sublet portions of an apartment, notwithstanding the terms of a rental agreement to the contrary. Objections:

A. It deprives an owner of income from his/her property, without due process;

B. It transfers a property right to a tenant (right to sublet), without just compensation;

C. It permits the unlimited surcharge on the premises, i.e. unlimited occupancy;

D. It permits arbitrary conduct on the part of the tenant, i.e. no rental application/financial qualification review allowed by owner.

State of California--Health and Welfare Agency
Department of Developmental Services

P O L I C Y M E M O R A N D U M
Developmental Centers Division

Series: 100 - Clinical Services

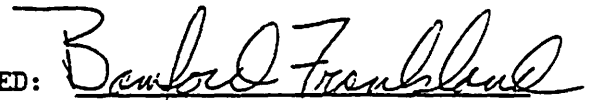
Number: 124

Action: New Policy

Subject: SOCIAL-SEXUAL DEVELOPMENT

Date: July 31, 1989

APPROVED:



BAMFORD FRANKLAND
Deputy Director

ISSUE:

The rights of individuals residing in developmental centers to express their social-sexual needs should be respected, as is their right to be protected from exploitation, abuse and sexually transmitted disease.

POLICY:

Developmental Centers will assist in the social-sexual development of residents when that assistance is necessary for the appropriate habilitation of the individual as determined through the interdisciplinary team process. Training will be conducted with residents to prevent sexual exploitation, abuse, undesired pregnancy, and sexually transmitted disease.

INSTRUCTIONS:

Guidelines on social-sexual training, resources, and consultation services that are appropriate to the developmental level of the individuals in residence shall be established, and orientation and training in the area of social-sexual development shall be provided for developmental center staff.

The resident's Interdisciplinary Team will be responsible for assessing the resident's social-sexual development needs and, where appropriate, designing social-sexual education objectives and plans.

When two residents request privacy for sexual intimacy, their respective Interdisciplinary Teams shall meet to determine if:

1. Both residents are able to make a rational informed decision, and
2. Neither resident is at risk for sexual exploitation, abuse, sexually transmitted disease, or pregnancy.

Interdisciplinary Team shall document their findings and, if indicated, shall include in each residents' Individualized Habilitation Plan a program for safer sex practices, disease prevention, and the ability to make informed decisions.

SONOMA DEVELOPMENTAL CENTER
DIRECT CARE POLICY AND PROCEDURE

Section 6 HABILITATION, EDUCATION & TRAINING September 1988 (rev.) * 6.23

TO: All Employees

SUBJECT: INDIVIDUAL SOCIAL-SEXUAL BEHAVIOR

AUTHORITY: ACDD: 127, 199, 202
Title 22: 72523(a) (10) (12) (13) (15) (19), 76317(a) (4) (h),
76525(a) (11) (14) (18) (24), 7611(e), 76619

PURPOSE:

To provide guidelines for staff in the interpretation and management of individuals' social-sexual behavior in order to assist in maximizing their growth and development.

POLICY:

The expression of one's sexuality is the right of every person. The rights of people who are developmentally disabled potentially include the same opportunities, responsibilities and concerns as the general population. (Special care must be taken to insure that those who need guidance are not denied the liberty to exercise their rights to the extent that they are able.) Appropriate social-sexual development shall be permitted and individual rights shall be advocated for each individual through implementation of this policy and training/education of individuals as well as staff. Staff are to be sensitive to the psycho-social issues of sexuality, respect the existence of the differing moral/cultural values, and committed to respect the values of individual clients, their families, and other staff.

DEFINITIONS:

- 1.0 Consent: The individual exhibits clear evidence of choice (verbal and/or behavioral) about his/her activities and is aware of possible consequences.
- 2.0 Normalization: A philosophy of services for people with developmental disabilities which attempts to make available to all such people patterns of life and conditions of everyday living which are as close as possible to the regular circumstances and ways of life of the larger society. The intent is to integrate people who have developmental needs into everyday community life in order to insure the same rights that the general populations values and enjoys.
- 3.0 Sexual Activity: Activity directed to sexual arousal.
- 4.0 Sex Education/Counseling/Training: The preparation for personal relationships by providing appropriate educational opportunities designed to help the individual develop understanding, acceptance, respect and trust for oneself and others. Sex Education includes the knowledge of physical, emotional and social growth, maturation, and understanding of individual needs. In cases where the individual demonstrates required understanding, this education may and should include "counseling" in the traditional sense. In those cases in which "education" in the traditional sense would

be above the individual's ability to understand and benefit, "training" may be the only effective approach.

GENERAL STANDARDS:

Clients are developing human beings and as such shall be encouraged to live, experience and achieve according to their own rate of growth and sexual development level.

Social-sexual development cannot be separated out and treated apart from the whole person but is related to all aspects of the individual's life.

Facility staff have an obligation in the development of individual programs and educational plans to assess individual needs and allow for their different levels of understanding and responsibility. These plans are developed as part of the Interdisciplinary Team process, of which parents and family are an integral part.

The existence of different cultural and moral values in the areas of socialization, sexuality and family planning is recognized. This facility is committed to respect and consider the values of residents, residents' families, and staff in all areas of planning and programming.

Staff should learn to respond to individuals' questions and concerns about sexuality (whether verbal or behavioral) with sensitivity and dignity, in a straightforward and professional manner.

★ Clients are to have access to private areas on all living units. These can be permanent or temporary spaces, depending on individual needs. With temporary spaces or areas normally publicly accessible, adaptation should be made by means of appropriate sight and sound barriers.

Affectionate physical contact of a non-sexual nature between staff and individuals is permissible and encouraged when in response to the individual's need for human contact. Sexual activity between individuals and staff (paid or volunteer) shall be considered absolutely unacceptable.

This facility is obligated to protect its clients and staff from exploitation.

The facility's staff have a responsibility to adhere to all applicable laws and regulations.

The general standards above dictate that individuals have a right to the same level of services regarding their sexual needs and behavior as with their other areas of development. Consequently, the method to deal with sexual matters is interdisciplinary team process involving assessment, discussion and program implementation. However, because of the specialized and sensitive nature of sexuality, a Sex Education Coordinator is established for each Clinical Program and a facility Sex Education Committee has been established to deal with the following:

1. Ongoing assessment of facility-wide needs;
2. Responsiveness to special or unmet needs;

3. Provision of staff training;
4. Consultation on difficult cases; and
5. Policy revision.

PROCEDURES:

1.0 The Interdisciplinary Team

- 1.1 As with other treatment areas, the full IDT possesses the essential authority to decide what kind of program would contribute best to the total development of the individual.
- 1.2 When sexual behavior is an issue for a specific individual the IDT is expected to develop and implement a program of education/training/counseling as with any other developmental area (see section 12.0 below).
- 1.3 If it is not clear that the issue can be dealt with through ordinary IDT processes and resources, the Program Sex Education Coordinator is contacted and participates in program development.

2.0 Program Sex Education Coordinator

- 2.1 Each Program is expected to have at least one Program Sex Education Coordinator who is knowledgeable and trained in the sexuality of the developmentally disabled.
- 2.2 The Program Sex Education Coordinator is a member and attends the meetings of the facility Sex Education Committee.
- 2.3 The Program Sex Education Coordinator serves as a consultant to the IDT's throughout the Program on cases involving sexual behavior, especially if the behavior has potentially serious consequences for the individual or others.
- 2.4 The Program Sex Education Coordinator is expected to be aware of the prevalence of individual sexual behavior in the Program, of the education/training/counseling being conducted, and the Program staff's competence to deal with these issues.
- 2.5 If the IDT/Program Sex Education Coordinator judge that a case requires attention beyond the expertise available in the Program, the Program Sex Education Coordinator, after consultation with the Program Director, will refer the case to the facility Sex Education Committee.

3.0 Sex Education Committee

- 3.1 The Sex Education Committee is a standing committee composed of the Program Sex Education Coordinators from each of the Programs, the Clients' Rights Advocate, two parents (appointed by the Executive Director), the Chaplain, and an appointed Chairperson (see SDC Administrative Policy 7.4).

- 3.2 The Sex Education Committee meets monthly or as needed.
- 3.3 The Sex Education Committee provides consultation on cases referred to it by the Program Sex Education Coordinator/Program Director or other concerned party. If the case requires expertise or treatment beyond the competence or resources of the Sex Education Committee, it requests professional consultation by referral to the Clinical Director.
- 3.4 Periodically the Sex Education Committee assesses the provision of sex education/training/counseling services being provided throughout the facility and makes recommendations to the Clinical Director.

4.0 NUDITY: The condition of being without clothing or other covering.

Standards: Nudity shall be permitted at appropriate times such as in private or in preparation for or during showering, dressing or retiring. Provocative exhibiting of one's body in public is not considered appropriate behavior.

Procedure:

Responsibility

Action

When permitted:

Program Staff

1. Leave the individual alone when the location and degree of privacy are appropriate and he/she is not infringing on the right of others.

When not permitted:

Program Staff

1. Ask the individual to dress himself/herself if he/she is capable of accomplishing the directive. If not, the individual shall be dressed by staff.
2. When possible, discuss the behavior with the individual.
3. If the individual resists the directive, document the behavior and action(s) taken.
4. Inform the IDT of the behavior.

Interdisciplinary Team (IDT)

1. If inappropriate nudity is a recurring event, design and implement a program plan that will appropriately address the reported behavior.

5.0 MASTURBATION: Sexual self-stimulation.

Standards: Masturbation shall be considered an acceptable means of sexual expression. As with all explicit sexual behavior, it is appropriate to particular times and places and shall be permitted under the following circumstances:

- . If the individual's behavior is not infringing on the rights of others.
- . If conducted in private.
- . If not excessive (masturbation that consistently interferes with the individual's participation in his/her appropriate program activities).

Procedure:ResponsibilityAction

Program Staff

When permitted:

1. Leave the individual alone when the location and degree of privacy are appropriate and he/she is not infringing on the rights of others.

When not permitted:

1. When in the public area of a living unit, then take to the bedroom or other private area of choice.
2. When an appropriate area is not available, interrupt the behavior.
3. When possible, discuss the issues of privacy and appropriateness with the individual in a non-punitive manner.
4. Document the behavior and actions taken.
5. Inform the IDT of the behavior.

Interdisciplinary Team (IDT)

1. Design and implement a program plan that will appropriately address the reported behavior.

6.0 BODY EXPLORATION: Looking at or touching another's body out of curiosity.

PETTING: Any kissing or caressing directed to sexual arousal.

Standards: Body exploration and petting shall be recognized as acceptable means of human sexual expression between two consenting individuals. Any

sexual expression at an early developmental level may indicate readiness for sex education and training.

Body exploration and petting shall be considered appropriate under the following circumstances:

- a. The individual's behavior does not infringe on the rights of others. (see DCP 6.7)
- b. The location and degree of privacy is appropriate.
- c. The behavior does not interfere with other learning activities.

Procedure:

Responsibility

Action

When permitted:

Program Staff

- 1. Allow individual to continue activity uninterrupted.
- 2. At an opportune time, provide sex education/training and counseling to those persons who have not had such.

When not permitted:

- 1. Interrupt behavior (non-judgementally).
- 2. When possible, discuss with the individual their feelings and understanding of the behavior.
- 3. Document the behavior and actions taken.
- 4. Inform the IDT of the behavior.

Interdisciplinary Team (IDT)

- 1. Design and implement a program that will address the aspects of the behavior that made it unacceptable.

7.0 **DATING:** A social engagement between two individuals where both have manifested a desire to be in the company of one another.

Standards: Dating shall be recognized as an acceptable socializing experience in interpersonal and sexual development.

Opportunities for social activities, including dating, shall be provided according to the developmental level, needs and wants of the individuals involved.

Procedure:

Responsibility

Action

Interdisciplinary Team (IDT)

1. Arrange appropriate socialization activities.
2. Determine the level of supervision required on an individual basis. Where possible, this should include consultation with the persons involved. The judgement about expected level of supervision shall be based on the individual's ability to:
 - a) interact in a socially appropriate manner;
 - b) follow social rules and use good judgement.

Program Staff

1. Provide supervision as indicated by the IDT.

8.0 SEXUAL RELATIONS: Explicit sexual activities including intercourse.

Standards: Sexual relations shall be recognized as an accepted means of sexual expression between consenting adults of the same or opposite sex. As with all explicit sexual behavior, it is appropriate to particular circumstances.

It shall be permitted if:

The IDT has determined that the individuals are adults of relatively equal competence who are capable of making choices.

The IDT has made sex education and birth control available in a timely manner up to the clients ability to understand.

The behavior is conducted in private.

The behavior does not interfere with other designated learning activities.

The IDT has determined to its satisfaction that sexually transmitted diseases, including HIV transmission will not occur.

Questions for the team to consider are:

1. does the client engage in unsafe sexual practices, e.g., those that include the transmission of body fluids from one person into another.

Sec.

2. is the client reliably trainable in safer-sex practices? (See Surgeon General's Report on HIV.)
3. has the client been identified as HIV positive (See HIV Infection Policy for guidelines on testing).

It shall not be permitted if:

- . the individuals' behavior infringes upon the rights of others;
- . the behavior is conducted in public;
- . one or both individuals are under 18 years of age;
- . the behavior interferes with other designated learning activities;
- . the IDT has determined sex education to be appropriate but it has not been provided in a timely manner.
- . the IDT has not addressed the issue of birth control where appropriate;
- . specific sexual activities are contraindicated in either client's individual program plan.

Procedures:

Responsibility

Action

Program Staff

When permitted:

1. Allow the individuals to continue uninterrupted.

When not permitted:

Program Staff

1. Interrupt the behavior in a non-punitive manner appropriate to the clients' level of understanding.

2. Where appropriate, discuss the behavior with the clients.

3. Document the behavior and action taken. Consider the necessity of a Special Incident Report.

4. Consider the necessity of a medical examination.

5. Inform the IDT of the incident.

Interdisciplinary Team (IDT)

1. Design and implement a program plan (in a timely manner) that will effectively address the behavior.

9.0 BIRTH CONTROL: See Direct Care Policy 6.24

10.0 EXPLICIT SEXUAL MATERIAL: Any material such as books or photographs depicting nudity or erotic behavior that is commonly interpreted to appeal to sexual interest.

Standards: Clients, ages 17 and under, shall not possess explicit sexual material; residents, age 18 and over, have the right to possess explicit sexual material.

Staff (paid or volunteer) shall not provide explicit sexual material for individuals, age 17 and under.

Procedure:

Responsibility

Action

Program Staff

When permitted:

- 1. The individual shall be allowed to keep it.

When not permitted:

Program Staff

- 1. It shall be removed from his/her possession with an appropriate explanation.
- 2. If explicit sexual material is found in the public areas of a living unit, e.g., visitors' room, nursing station), it shall be removed from the area by staff.
- 3. If an adult individual shares explicit sexual material with other individuals who are under the age of 18, staff shall insure that the owner stop the activity.

Interdisciplinary Team (IDT)

- 1. If use of this material is connected with harm to others, then the IDT has the right to restrict its availability and to design and implement a program for corrective use.

11.0 SEXUAL ABUSE (SEXUAL EXPLOITATION): Any sexual act which results in physical or psychological harm to the victim, and which occurs as a result of coercion, physical force, or taking advantage of an individual's disabilities. This includes self abusive sexual activity and enticement into sexual activity for monetary or other reward.

Standard: All individuals have the right to be free from and protected against sexual exploitation.

Procedure:

Responsibility

Action

All Staff

If individuals are discovered engaged in sexual abusive behavior:

1. Stop the activity immediately and separate the individuals.
2. Immediately report the incident to supervisory/management staff on duty.
3. Report the incident for appropriate investigation (see DCP's 6.7 and 10.1)
4. Complete a Special Incident Report; in case of suspected rape, refer to DCP 6.7.
5. Document the incident in the individuals' Clinical Record.

Interdisciplinary Team (IDT)

1. Design and implement a program plan that will appropriately address the behavior.

If someone reports an incident of sexual abuse-

Program Staff

1. Report incident for appropriate investigation (see DCP's 6.7 and 10.1).
2. Complete a Special Incident Report.

Interdisciplinary Team (IDT)

1. If necessary, design and implement a program plan that will appropriately address the reported behavior.

12.0 SEXUAL EDUCATION/TRAINING COUNSELING: Services rendered to individuals by qualified staff that serve either an educative function regarding appropriate social and sexual behaviors/development, or that aid the individual in overcoming problems or that promote growth in the area of sexual functioning.

Standards: Each individual has the right to sex education, training, and counseling regarding sexual matters based upon assessed needs. These services are delivered based upon IDT planning and implementation. Requests for sex education training and counseling may be made by the individual, a person representing her/him, or any member of the IDT.

Procedure:

Responsibility

Action

Program Staff

1. Contact the Program Sex Education

Client/Representative
Interdisciplinary Team (IDT)

Coordinator.

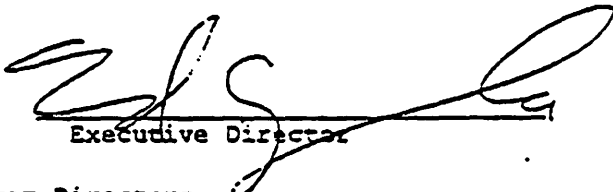
- 2. Arrange meeting with pertinent members of IDT.
- 3. Formulate statement of problem, need, type of service and service provider required.
- 4. Where possible, design and implement program plan to address problem need.

Program Sex Education Coordinator

- 1. Act as liaison with the Sex Education Committee, as indicated when services cannot be provided within the Program.
- 2. Maintain resource file of:
 - a. Service Providers within and outside of facility.
 - b. Cases for which the Committee has provided consultation services, for which confidentiality shall be maintained.



 Clinical Director



 Executive Director

RESPONSIBLE FOR IMPLEMENTATION: Program Directors

RESPONSIBLE FOR AUDIT: Clinical Director

*Revised from policy dated 3/88
 Approved DCPC: 8/24/88
 9/28/88/pc#2

Memorandum

Recd 7/8/89 EOC

To : Lois Cissel
 Client Rights Advocate
 Agnews Developmental Center
 3500 Zanker Road
 San Jose, CA 95134

Date : January 31, 1989

Subject: Privacy

From : *Kathleen Eddy*
 Kathleen Eddy
 Staff Counsel
 Office of Legal Affairs
 1600 Ninth St., Rm. 240
 P.O. Box 944202
 Sacramento, CA 94244-2020
 ATSS 485-1003

cc: Keri / Sylvia 7/8

cc: Maria Trentman
 AB VII

RECEIVED

MAR - 1 1989

445-4849

As you requested, we have researched the issue of privacy as it relates to residents of a developmental center who are seeking uninterrupted time alone with a member of the opposite sex. There is, unfortunately, no clearly stated definition of privacy and no legal precedents directly on point. The decisions you make will have to be based on departmental policy rather than specific legal mandates. We will discuss several issues which you should consider when formulating your policies.

The issue of privacy can be divided into two parts: the right to privacy which exists only pursuant to court decisions which find the right to be included in either the state or federal constitution as determined by the courts; and the right to privacy found in a specific grant of the right in the Welfare and Institutions Code and Title 17 of the California Code of Regulations. Although the constitutional right to privacy may not include the circumstances you are encountering at Agnews, the Welfare and Institutions Code right to privacy may be applicable.

The constitutional "right to privacy" is a generic term which encompasses various rights recognized to be inherent in the concept of ordered liberty. Such a right presents governmental interference in intimate personal relationships or activities, the freedom of an individual to make fundamental choices involving himself, his family, and his relationships with others. (Black's Law Dictionary, Fifth Edition, 1979.) The cases discussing the right to privacy were characterized in Whalen v. Roe (1977) 429 U.S. 589, as being of two types:

1. The right to avoid disclosure of personal matters;

or

2. The right to independence in making certain kinds of important decisions such as "matters relating to

marriage, procreation, contraception, family relationships, and child rearing and education." (Pul v. Davis (1976) 424 U.S. 693.)

Because this right to privacy is not specifically stated in either the state or federal constitution, it is necessarily limited to those circumstances of the cases where the right was found to exist. These cases can, of course, be used to analogize to other similar circumstances. None of the cases discussing the constitutional right to privacy have dealt with the right of an unmarried resident of a state institution to have a sexual relationship. The tendency has been, however, to find for the right of the individual to make personal choices. Examples are: Griswold v. Connecticut (1965) 381 U.S. 479, which dealt with contraceptives; and Roe v. Wade (1973) 410 U.S. 113, and Doe v. Bolton (1973) 410 U.S. 179, which dealt with abortion. If the resident were married, or if the resident wanted contraceptives or an abortion, the answer would be different.

In addition to the constitutional right of privacy, Welfare and Institutions Code section 4502 establishes in all developmentally disabled persons the "right to dignity, privacy, and humane care." This right has also been adopted as part of the department's regulations in section 50510 of Title 17 of the California Code of Regulations. Given the limitations on the constitutional right to privacy, it is possible that the scope of the right granted in the Welfare and Institutions Code is greater than the constitutional right to privacy; however, the right has never been construed by the courts.

Welfare and Institutions Code section 4502 also requires that a developmentally disabled person be provided "with the least restrictive conditions necessary to achieve the purposes of treatment." When read together, the rights to dignity, privacy, and a least restrictive environment, give weight to the argument that residents who are capable of consenting to sexual relationships should be given the opportunity to make that decision and to have that relationship in a private, dignified manner.

The reasoning was used in a California case which dealt with issues similar to the ones in question here. Foy v. Greenblott (1983) 141 Cal.App.3d 1, involved a young woman who was adjudicated a gravely disabled and incompetent person under the Lanterman-Petris-Short Act. The Superior Court appointed the Santa Clara public guardian as Virgie Foy's conservator, and denied to Virgie the rights to consent to or to refuse any medical treatment related or unrelated to her gravely disabled condition. The public guardian placed Virgie in a private, locked mental health facility licensed by the state. While in the facility, 128n
Virgie engaged in voluntary sexual relations and became pregnant.

After her child was born, she brought an action claiming, among other things, that the public guardian and the facility knew she had a history of irresponsible sexual behavior and that she should have been supervised in her contacts with men so that the pregnancy would not have occurred.

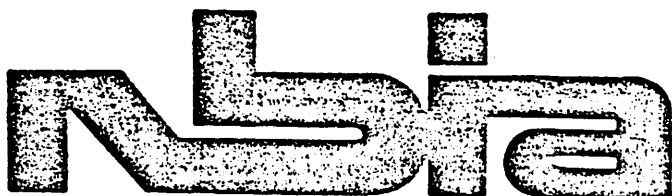
The court clearly stated that such supervision was not acceptable "Every institutionalized person is entitled to individual treatment under the 'least restrictive' conditions feasible--the institution should minimize interference with a patient's individual autonomy, including her personal 'privacy' and 'social interaction.'... (citations omitted.) Obviously, effective hospital policing of patients would not only deprive them of the freedom to engage in consensual sexual relations, which they would enjoy outside the institution, but would also compromise the privacy and dignity of all residents..."

"By this review of the legal rights affected by the procedures appellants urge respondents should have followed, we do not indicate that mental health personnel can never restrict consensual sexual activities of a patient...without infringing civil rights. ...Nonetheless, the statutes and case law discussed above do more than define the minimum patients' rights, which mental health professionals are obliged to respect; they also express a public policy of maximizing patients' individual autonomy...." Foy v. Greenblott, supra, at pages 10 and 11.)

There are obvious differences between Foy and the instance which gives rise to this analysis; however, the language and concepts used are evidence of at least one court's desire to protect the rights of persons with disabilities to make decisions affecting their lives. The developmental center, then, must balance the individual's interest in privacy, dignity, and a least restrictive environment with the needs and resources of the developmental center and the possible perception that the developmental center is encouraging or condoning premarital sex. In addition, we understand that the licensing agencies tend not to approve of a facility which allows residents to have sexual relationships.

We believe that if this case were to come before a court, the likely result would be an order to provide a private place for the resident involved. This is not a foregone conclusion, however; much would depend on the specific facts of the case and the particular court involved.

We have presented the issues which have a bearing on the questions, but the ultimate decision must be a policy determination. We will be happy to work with you in formatting the policy or to provide any other information you need.



National Business Insurance Agency
Anthony F. Melia, CIC President

February 14, 1990

Ms. Suzanne Miller
Progressive Casualty Insurance
11010 White Rock Road
P.O. Box 2350
Rancho Cordova, California
95741-2350

RE: Department of Insurance File #R9011430
Policy #SMT0260-592-0

Dear Ms. Miller:

I'm in receipt of your correspondence dated February 8, 1990. While you have suggested that there are rating discrepancies, my discussion with the insurance agent Bennett F. Witeby and customer service representative Kathy Walker, she has indicated that notes in her file show that your underwriter Daphne rated the policy on November 28, 1989. This was rated in your underwriting department and not the underwriting department of the insurance agency. Further to that, Daphne acknowledged that the rate was for territory 54 and provided the premiums applicable.

Further, Ms. Walker indicates that she provided your underwriter Daphne with the age, birthdate, and marital status for me and expected that a valid rate would be provided.

While you indicate, "there is also a 20% surcharge applied to unmarried operators", I feel this is wildly discriminating. I doubt that you are able to give any substantial proof that a driver who is divorced, separated, widowed or single, exposes the company to any greater risk than somebody who is married and living with his or her spouse! It is my sound belief that your 20% surcharge for people who have chosen to be single or who have become divorced or separated from their spouse or who have the misfortune of being widowed is repugnant, reprehensible and totally indefensible.

Further, your pointing out in your fifth paragraph that I had the option of requesting a prorata cancellation is fallacious.

128p

1017 N. LaCienega Blvd. West Hollywood, CA 90069-9006
P.O. Box 691006, West Hollywood, California 90069-9006 (213) 659-4700

In other words, "if you don't like the fact that we discriminate against single people, go elsewhere"! I do not believe that this the manner in which we expect business to be conducted in the state of California. I feel that discrimination is an ugly tactic for any business and especially insurance companies.

I would hope that you reconsider your errors and revise the premium with an apology.

Sincerely,


Anthony F. Melia

cc: The Department of Insurance, Attn: Candy Hernandez
3450 Wilshire Boulevard
Los Angeles, California 90062

Thomas F. Coleman, Chairperson ✓
Consumer Task Force On Marital Status Discrimination
Office of City Attorney
1800 City Hall East
Los Angeles, California 90012

Joan Howard, Sr. Underwriting Officer
The Department of Insurance
3450 Wilshire Boulevard
Los Angeles, California 90062

/dm



February 8, 1990

Anthony F. Melia
Post Office Box 691006
West Hollywood, CA 90069-9006

Policy Number: SMT 0260-592-0
DOI File Number: R-9011430

Dear Mr. Melia:

This letter is a response to a Department of Insurance inquiry made at your request.

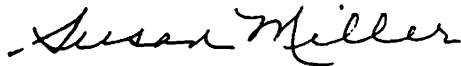
It has been requested that we explain the rating discrepancies on your policy. Enclosed are copies of our Over 50 Motorhome rate tables. I will highlight the proper rates as they relate to your policy. The agent used rates from the wrong annual premium package when he worked up your quotation. The agent used the premium package from territory group one for drivers age 60 and over. The proper rate is listed in territory group four for drivers age 50-59. There is also a 20% surcharge applied to unmarried operators. I will highlight this provision in the rateguide.

The Department of Insurance has requested information pertaining to Progressive's Insurance Rate Filing. This rateguide has been filed as of June 2, 1989 file #3598. The rates in this program have been in effect since March 1, 1988 for New Business and April 1, 1988 for Renewals. A revision to the Uninsured/Underinsured Motorist rates are made effective 12-31-88. The revision was included in the June 2, 1989 rate filing.

When you received your revised premium you had an option of requesting a prorata cancellation on the misquoted rate. You did not, however, request cancellation. You sent in a payment for the remaining balance and this account is now paid in full.

I hope the information I've provided answers your questions as to why the uprate occurred. I'm afraid an explanation of the rating is all I can offer. We do not offer an adjustment of rates on misquotes.

Thank you,



Susan Miller
Progressive Casualty Insurance

cc: Department of Insurance
cc: Agent
cc: File

Enclosure

General Information And Rules

COMMISSION

15% for all business including new, renewal and transfer. Do not retain commission, you will be paid by monthly statement.

BINDING AUTHORITY

Coverage is bound as of the effective date on the application, provided:

1. The envelope containing the application is postmarked within 72 hours of the effective date.
2. The application is filled out completely.
3. The application is signed by the applicant.
4. Proper payment accompanies the application.

If the postmark is later than 72 hours, coverage will be effective on the postmark date.

CANCELLATION GUIDELINES

1. **FLAT CANCELLATIONS** — Flat cancellations will not be permitted after the inception date of the policy.
2. **INSURED'S REQUEST** — Cancellation requested by the insured requires either the return of the policy or the insured's written request. Effective date of the cancellation will be no earlier than the postmark date of the mailing of the request to our office.
3. **LOSS PAYEE** — If there is a loss payee, this office will mail a notice of cancellation, unless the loss payee releases his copy of the policy or submits a written release.
4. **COMPUTATION OF PREMIUM** —
 - a. Cancellations requested by the insured will be cancelled on a short-rate basis using the customary short-rate table. Policies cancelled for non-payment of premium are interpreted to be cancelled by insured's request and will be computed short rate.
 - b. Cancellations requested by the company will be cancelled on a pro-rata basis.
 - c. A \$50 minimum earned premium applies to all cancellations.
5. **TOTAL LOSS** — Cancellations requested due to a total loss will be cancelled effective the day after the loss, if requested within **60 days** of the date of loss. After 60 days, standard cancellation rules will apply. A total loss does not automatically cancel an in-force policy. We must receive a signed release.

ENDORSEMENTS

If an endorsement results in additional premium, send no money with the request. The insured will be billed directly for any amounts due.

ELIGIBILITY

To qualify, the motorhome must be:

1. **Used only for recreational purposes.** The motorhome does not qualify if rented, driven to and from work, used for business purposes, used as a principal residence, or if it is the only vehicle in the household.
2. **A conventional or mini-motorhome.** The motorhome does not qualify if it is a camper van or trans van, is a truck mounted camper or is a converted vehicle. A converted vehicle is any vehicle which was not originally designed to be a motorhome but has been altered to include such facilities as cooking and sleeping. Panel trucks and buses are common examples. **Converted vehicles are unacceptable.**
3. **18 feet or longer from front to rear bumper.** Any motorhome under 18 feet is not acceptable.

DISCOUNTS AND SURCHARGES

1. **Transfer Discount - 10%** - If you are renewing a claim-free **six month** or **annual** policy from any other insurance company, a **transfer discount of 10%** applies. This discount continues at renewal as long as the policy remains claim free.
To receive this discount, a copy of the existing policy declarations page, renewal notice or I.D. card must accompany the application. If the previous policy has expired for more than 30 days, the transfer discount does not apply.
2. **Single Surcharge - 20%** - If an applicant or operator is single (including divorced, separated, widowed or living apart), a 20% surcharge applies.
3. **Older Motorhome Surcharge**
Model years 1968 - 1977 — 10% Surcharge applies (Homes 11-20 years old)
Model years 1967 and older — 20% Surcharge applies (Homes over 20 years old).
[Please note after 1/1/89 these model years will change by one year.]
For Motorhomes 11 years old and older, include an interior and exterior photo.

ALL REGULAR OPERATORS MUST:

1. Be age 50 or older.
2. Have at least 12 months experience driving a motorhome (not necessarily the insured vehicle).
3. Have a permanent residence and residence telephone number.
4. Own at least 1 other automobile.
5. Have a driving record with no more than 2 minor violations in the past 3 years. **No accidents or major violations accepted.**
6. Possess a valid U.S. driver's license. No international, revoked or suspended licenses accepted.
7. Owner must have owned a motorhome for at least 12 months.

A REGULAR OPERATOR IS ANYONE WHO DRIVES THE MOTORHOME 10% OR MORE OF THE TIME IT IS IN OPERATION.

SIMPLE RATING:

1. Review eligibility criteria listed above.
2. Review Discounts & Surcharges listed above.
3. Use actual cash value of the motorhome as rating base. Submit for approval if you want the rating base to exceed the purchase price. The rating base is the **most** we will pay in the event of a total loss. **Awnings** must be listed under personal effects and **should not** be included in the ACV of the base motorhome. Comprehensive deductible applies to awnings.
4. Determine appropriate package rate and select any optional additional coverages desired.
5. Apply any discounts or surcharges to all coverages.
6. If you have any questions, call us at:
(916) 638-5212, Ext. 570 or 800-777-3030, Ext. 570
Please see Service Tips section before calling.
7. Send applications to:
Progressive Casualty Insurance Company
P.O. Box 2530
Rancho Cordova, CA 95741-2350
8. **All business in this program must be paid in full with the application. Submit the full gross premium with the application. Do not retain commission.**

MISCELLANEOUS NEWS ARTICLES

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STATE NEWS

Monday, August 21, 1989

Beliefs No Basis to Turn Down Renters, Panel Says

By Dee Ziegler

Daily Journal Staff Reporter

Landlords may not refuse to rent to unmarried couples under California's housing and civil rights laws, the state Fair Employment and Housing Commission held recently in two cases.

The rulings came in the cases of Chico and Downey landlords who refused to rent to unmarried couples because premarital sex violated the landlords' religious beliefs.

The Chico landlady, Evelyn Smith, was ordered to pay the unmarried couple she turned away \$954 for time they spent looking for another apartment and for emotional distress.

The Downey landlords, Agnes and John Donahue, were ordered to rent an apartment to the couple they rebuffed when a unit becomes available. The Donahues were also ordered to pay the unmarried couple more than \$7,640 for emotional distress, time spent looking for another apartment and the difference in cost between the Donahue's rental unit and the apartment they ultimately rented. Emotional distress accounted for \$6,000 of the damages.

Smith and the Donahues were ordered

to post a notice of prospective tenants rights under the Unruh Civil Rights Act.

Smith, a Presbyterian, and the Donahues, described by the commission as "devout Roman Catholics," had argued that they had a right under the federal and state Constitutions to exercise their religious beliefs and bar unmarried couples from their property.

But the commission skirted these constitutional arguments, saying it lacked the authority to decide the issue. Without appellate law on the issue to guide it, the commission said it must leave the constitutional question of religious freedom in renting property to the courts.

Judicial Review

Under state law, the landlords may seek judicial review of the commission's decisions in *Dept. of Fair Employment and Housing v. Smith*, 89-11, and *Dept. of Fair Employment and Housing v. Donahue*, 89-10.

Smith's attorneys at the Washington, D.C.-based Concerned Women for American Education and Legal Defense Foundation could not be reached for comment.

The commission's decision said Smith "believes that sex outside of marriage is sinful and that it is a sin for her to rent her

units to people who will engage in non-marital sex on her property."

Smith believed that she would never meet her deceased husband in the hereafter if she permitted non-marital sex on her premises, the commission said in its Aug. 10 decision.

"We do not doubt the depth and sincerity of respondent's religious convictions, and we are sensitive to the burden that respondent will bear for adherence to those convictions if the F.E.H. Act is enforced against her," the commission wrote in a 14-page decision.

"We are also sensitive to the complainants' constitutional rights to privacy and to the need for a liberal interpretation and for uniform and effective enforcement of the Act's prohibition of marital status discrimination in housing."

The commission awarded the unmarried Chico couple, Kenneth C. Phillips and Gail Randall, \$454 plus interest for time lost from their landscaping business and travel costs incurred while inspecting 30 other apartments.

Phillips was awarded \$300 in emotional distress and Randall, \$200.

In the Downey case, Agnes Donohue firmly believed that sexual intercourse

outside of marriage is a mortal sin for which the sinner will go to hell unless the sin is forgiven before death, the commission wrote.

She said she believed it is a sin to help another person commit a sin.

When she turned down the unmarried Verna Terry and Robert Wilder because they were not married, the couple fought for the first time and became upset, the commission stated.

The commission awarded Terry \$4,000 and Wilder \$2,000 in emotional distress. The commission awarded Terry \$227 and Wilder \$795 in lost wages while the two searched for another apartment.

The couple will also receive \$618.75 for the difference in rents between the apartment they occupied when their case came to hearing in July 1988, and the apartment the Donohues' refused to rent.

The commission ordered the Donahues to pay the couple for future differentials between their rent after the hearing and the time they move into the Donohues' building.

TWA Changes Refund Policy

On the eve of filing a lawsuit concerning gay couples' rights against Trans World Airlines Inc. in the Superior Court of California, National Gay Rights Advocates and its cooperating attorneys, Raymond Wheeler and Anne Zinkin of the San Francisco law firm of Morrison & Foerster, reached a settlement of the dispute. The case against TWA arose out of the airline's initial denial of a refund to a gay man under its family emergency guidelines. The would-be plaintiff, Tony A. Hurd of San Francisco, had purchased a non-refundable, super-saver roundtrip ticket from TWA for air travel from San Francisco to Washington, D.C. On the day that Hurd was to travel to Washington, his partner of 11 years, Joel Gerughty, had a heart attack and was hospitalized. As a result, Mr. Hurd cancelled his planned trip to Washington. TWA normally grants refunds on non-refundable or special fare tickets that are not used because of a family emergency. When Mr. Hurd wrote to TWA asking for a refund, however, he was initially denied such a refund. TWA responded that refund compensation applied to "immediate family members" and that a "live-in lover is not considered immediate family." In response to NGRA's demand, TWA tendered a full refund to Hurd and a letter of apology for the delay in processing the refund request. ▼

T.W.A. Broadens Use of 'Frequent Flier' Tickets

Trans World Airlines has changed the policy of its "frequent flier" program in response to complaints and a lawsuit filed by a homosexual couple.

Until recently, the airline required that people who earned free airline tickets by accumulating mileage on other trips use the free tickets themselves or have their relatives use them.

Airline officials said the policy was intended to prevent people from selling or bartering the tickets. But gay men and lesbians complained that the policy was discriminatory because it did not permit them to share their free tickets with their companions.

"What we have now done is to expand the policy so that virtually any frequent flier can travel with any companion of their choosing," said Mark Buckstein, the airline's general counsel, "We felt our rules had probably been unduly restrictive."

Sale Still Forbidden

The new policy is being announced to members of T.W.A.'s frequent flier program in a mailing now under way, airline officials said last week. The policy still requires that both passengers using free tickets travel on the same itinerary and still bars sale or bartering of the tickets.

Until the policy change, T.W.A. was the only major airline still limiting shared free tickets with family members, said members of gay rights groups. Other airlines that once had similar policies dropped them.

One result of the rule change at T.W.A. is the settlement of a suit that lawyers with the Lambda Legal De-

Almost any companion can go on a free trip.

JULY 16 1989

fense and Education Fund of New York City filed against the airline in Federal District Court in May, charging the airline with discrimination in its frequent flier program. The suit asserted that William L. Johnson, a New York lawyer and a member of T.W.A.'s program, was denied a ticket in July 1988 under the frequent flier program for his live-in companion of seven years, William Hibsher.

Although Mr. Johnson had accumulated enough mileage to earn two free tickets, the airline refused to issue one to Mr. Hibsher, the suit charged. Mr. Johnson said an official of the airline suggested that Mr. Johnson and Mr. Hibsher try to qualify for the extra free ticket tickets by pretending to be cousins but they refused. Instead, they bought a ticket for Mr. Hibsher.

Other Couples Affected

In the suit, Mr. Johnson also sought the price of the second ticket and \$100,000 in punitive damages. Neither Mr. Johnson nor his lawyer, Evan Wolfson, would disclose any financial terms of the agreement and airline officials said the settlement was not yet final.

Mr. Johnson said he was satisfied that the policy change would answer the objections raised in the lawsuit. He said, "When T.W.A. was forced to pay

attention to what it was doing, they realized it was bad business and they changed it."

The airline's former restriction also prohibited unmarried heterosexual couples from traveling together on free tickets, but representatives of gay rights groups said it was less likely that heterosexual couples would be asked for proof of their kinship.

"It's easier to perceive the discrimination when you're part of a same-sex couple," Mr. Johnson said. "For a straight couple living together, I think it's a little bit easier to find a way around it or to shrug it off."

In San Francisco, lawyers with the National Gay Rights Advocates, who learned of the rule change Friday, had planned to file suit against T.W.A. within a month. "I will have to examine the change closely," said Cynthia Goldstein, a lawyer for the group. "I would say that unless the policy is totally inclusive of gay and lesbian couples, then we will go ahead and file a suit."

Others who had complained are satisfied with the change. Kevin Cathcart, a lawyer with the Boston group of Gay & Lesbian Advocates and Defenders, who had written a letter to the airline about the policy, said, "I think it's a very positive decision on the part of T.W.A."

In June, Mr. Cathcart received a letter from a T.W.A. official informing him of the new policy and stating, "We are aware of the nontraditional lifestyles prevalent in our society and our sole interest is the promotion of travel, not social commentary."

Equal Opportunity

Linje-flyg, Sweden's major domestic airline, announced recently that homosexuals living together in Sweden are eligible for the same reduced fares as those available to heterosexual couples.

Gay Survivor Challenges Paper's Obituary Policy

Christopher Sands is angry. A recent trade newspaper obituary for Robert Francis Sullivan, Sands's lover of 11 years, didn't list Sands as a survivor.

Outraged, Sands bought a half-page ad in the trade publication, the Los Angeles entertainment newspaper *Daily Variety*, to express his anger. "The grieving gay spouse [who is] left behind should not have the ugly boot of bigoted homophobia, unintentionally or not, pressed down hard against [his] throat," Sands wrote in the ad.

Sands, a television producer, submitted an obituary to *Daily Variety* when Sullivan died of AIDS-related complications at 35. The obituary listed Sands as Sullivan's lover, but the newspaper deleted the mention when it published the obituary.

Sands was said to be out of town and not available for further comment.

In a published statement, *Daily Variety* officials said the newspaper's long-standing policy is to list as survivors "only those individuals who are blood relatives, adopted children, or a legally recognized spouse of the deceased."

The newspaper doesn't "differentiate between the sexes," *Daily Variety* associate publisher Mike Silverman told the *Los Angeles Times*. The policy against listing lovers or companions as survivors "applies in all cases, whether someone is living with a man, a woman, a Martian, or a cat," Silverman said. Sands, though, told the *Times* that "these kinds of policies . . . constitute homophobia."

— Robert W. Peterson

The Advocate 8-30-88

POST TO INCLUDE GAYS AS SURVIVORS

Washington, DC - The Washington Post has amended a longstanding policy and will, in some instances, list "longtime companions" of Gay men and Lesbians as survivors in obituaries, a Post editor said this week.

According to Washington Post Obituary Editor J.Y. Smith, the newspaper will list companions as survivors in news obituaries if the family of the deceased person verifies the relationship by mentioning the companion in a paid death notice in the Post.

Lorri L. Jean, president of the Gay and Lesbian Activists Alliance applauded the decision saying, "The Washington Post should be commended for making this change to this extent, so far." Jean, who met several times with Post editors to lobby for a change, said the new policy indicates that Post representatives "were listening". --The Washington Blade

LESBIAN NEWS DEC, 1987

San Francisco, CALIFORNIA IIIIIIIII

The *San Francisco Chronicle* disclosed Dec. 17 its policy prohibiting the listing of surviving lovers in death notices.

In response to a letter to the editor, editors of the Bay Area's largest daily newspaper wrote, "The *Chronicle* policy is to publish only the [names of] immediate blood relatives as survivors. This is publishers to discuss the policy.

In the meantime, Phelps Dewey, assistant to *Chronicle* publisher Richard T. Thieriot, defended the paper's policy of ignoring lovers. Executive Editor William German, however, left the door open for a change in policy. "I'd want to look at it case by case," German told the *Sentinel*, a San Francisco gay weekly. "There is no hard, firm, absolute policy."

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A Renter's Right to Fornicate

A landlady says the First Amendment allows her not to rent to unmarried couples

CHICO—ONLY A "WIMP Christian" would rent an apartment to a man and woman who are living in sin, says a landlady in this small college town full of singles seeking housing.

Devout Presbyterian Evelyn Smith has taken her religious battle to the Butte County Superior Court, asking the court to rule she doesn't have to rent her two duplexes to those she calls fornicators. *Smith v. Fair Employment and Housing Comm'n* (No. 103543). At least two other so-called living-in-sin cases are winding their way through state courts in Minnesota and Massachusetts.

Smith lost the first round in August when the state's Fair Employment and Housing Commission ruled that she violated Government Code sections 12955(b) and (c) by discriminating against unmarried couples. Smith is appealing an order that said she must stop discriminating and pay damages of almost \$1,000 to an unmarried couple she refused to rent to in 1987.

Smith's suit is being backed by Concerned Women of America, a conserva-

tive women's group based in Washington, D.C., and she has drawn moral support from such conservative heavy hitters as columnists James J. Kilpatrick and Patrick Buchanan.

"Our overall goal is to get the First Amendment right of religion exemption recognized" by the Fair Employment and Housing Commission, says Jordan Lorence, an attorney with Concerned Women.

"There has to be a compelling state interest to burden Mrs. Smith's freedom of religion."

Lorence says the current law "smacks of hypocrisy" because state universities and colleges are permitted to reserve campus housing for married students. Govt C §12995(b).

Smith testified at the August hearing that she had turned down the couple because she feared she would not be able to join her late husband in heaven if she rented to unwed couples. The couple said they were forced to move to the town of Paradise 15 miles away to find affordable housing.

Jonathan Lew, an attorney for the Fair Employment and Housing Commission, presented evidence showing the Presbyterian church had not filed any disciplin-

ary action against a church member for renting to an unwed couple in at least 17 years. The church's discipline rules contain no specific language suggesting Christians should refrain from engaging in commercial business with unmarried couples, according to evidence presented at the hearing.

The commission refused to rule on the freedom-of-religion issue and reached an identical decision in a discrimination complaint filed by an unmarried couple in Los Angeles. In fact, commission attorneys say there have been a number of other cases involving rentals to unmarried couples, but none involved such a serious freedom-of-religion challenge.

Smith and Lorence say they expect to lose at the lower levels, but they still have high hopes for their crusade. "I personally think we will lose at the superior court level," says Lorence, "and it is going to take getting into an appeal court. We [will] just throw the pass in the air and hope it gets caught by the state Supreme Court or the U.S. Supreme Court."

—JIM HAYNES



Devout landlady Evelyn Smith: Hoping to reach heaven by way of Superior Court

CALIFORNIA
LAWYER

NOVEMBER 1987

Suit Filed To Protect Gay Couple's Rights

National Gay Rights Advocates has filed suit against Farmers Insurance Company, on behalf of a gay couple, Boyce Hinman and Larry Beaty, who have been denied a joint "umbrella" liability insurance policy on their house. Farmers has insisted that they buy two separate policies because they are not married. Since state law prohibits gay and lesbian couples from marrying, such underwriting practices effectively bar them from obtaining insurance policies on the same favorable terms as married couples. NGRA contends that Farmers' pricing of the "umbrella" policy violates the Unruh Civil Rights Act prohibiting arbitrary discrimination by business establishments.

"Boyce Hinman and Larry Beaty have lived together for seventeen years," commented NGRA Legal Director Leonard Graff. "They own a home, two cars, and all of their furniture together; they share the common necessities of life and are each others' primary beneficiaries in their wills and insurance policies. Farmers has already issued them joint homeowners and automobile insurance policies, but has now refused the joint 'umbrella' policy. Making them buy two separate policies at twice the cost is quite plainly arbitrary discrimination."

"When businesses attempt to charge gay and lesbian couples more for the same services provided to heterosexual couples on the grounds that 'they aren't married,' they can expect a legal battle. Although legal marriage is not yet an option for gays and lesbians, we will use the civil rights laws and the courts to secure our rights as legitimate couples."

NGRA's cooperating attorneys on the case are Paul Dion and Maureen Sheehy from the law firm of Feldman, Waldman & Kline in San Francisco. The lawsuit was filed in Sacramento County where Boyce Hinman and Larry Beaty reside.

GLAZA *news*



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What's in A Family?

Other people's families are different from yours and mine. In fact, yours and mine may not look too much alike.

The topic of families — and what they are today — arose in some meetings with some interesting and intriguing comparables. Conclusion: a family — like a word to Alice's caterpillar — today means whatever you want it to mean.

The Unspeakable Zoo to the South addresses the problem by simply avoiding it. There are no "families" in San Diego, so sayeth their zoo. A couple (whatever that is) buys a Dual Membership, then buys a separate single membership for each child. Saves on semantics.

The Los Angeles Natural History Museum, whose animals are often large, lizardly and unlamented, takes the opposite tack. Their family membership admits your entire household. If they live there — or at least spend enough time in the house to qualify as lobbyists — they can come, too.

The County Art Museum assumes the conservative air. Ozzie and Harriet are alive and well for them. A Family Membership admits you, your spouse and your children under 18.

The family variations are endless. If you are single but marry a lady who has two children of her own, and her ex-husband's previous spouse's stepson is living with her, and the stepson's best friend, whose home is down the street but his mother is with the CIA and his father works for IBM so he hasn't seen either of them in years, eats every meal with you, then what have you got? A situation comedy, I agree, but also, most likely, a modern, extended family. And what if the lady you take up with is no lady, but another man? And what if...

About the thirteenth "what if," we at GLAZA lost our nerve. Inspired by cowardice and courtesy, we penned the following phrase: "Family Membership: Free admission for your family."

Please don't ask us today what it means. We'll have it figured out by tomorrow.

— Priscilla Tamkin

Yes. I want to join!

Please start my membership in the following category:

- | | | |
|--|--|--|
| <input type="checkbox"/> \$125 Animal Advocates* | <input type="checkbox"/> \$35 Family** | <input type="checkbox"/> \$250 Curators' Guild* |
| <input type="checkbox"/> \$75 Contributing | <input type="checkbox"/> \$25 Regular*** | <input type="checkbox"/> \$500 Director's Guild* |

* *Special GLAZA Gold Card with additional privileges.*

** *Free admission for two adults and your children.*

*** *Free Admission for two.*

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— Membership rates include one-year subscriptions to *Zooview* (\$5) and *GLAZANEWS* (\$2.50) —

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Antigay Insurance Co. Sued

Sought to Exclude Single Males

by Peter Freiberg

A California insurance firm seeking to identify applicants who might get AIDS has been accused in an \$11 million lawsuit of a "crude attempt" to screen out gay men by asking discriminatory questions of single males in "occupations that do not require physical exertion."

As examples of the occupations that a company memorandum said have "provided a disproportionate share of this disease," the firm listed restaurant employees, antique dealers, interior decorators, consultants, florists and "people in the jewelry or fashion business."

The lawsuit, filed May 5 by National Gay Rights Advocates (NGRA) and the Employment Law Center of the Legal Aid Society of San Francisco, charges that the Santa Barbara-based Great Republic Insurance Co. is illegally denying medical insurance to gay men. It was said to be the first major lawsuit challenging the AIDS-related underwriting practices of an insurance company.

"What they're doing," said Ben Schatz, director of NGRA's AIDS Civil Rights Project, "is segregating all applications from single males in stereotypically gay occupations. Their conception of who gay men are is out of some 1940s time warp. They're trying to weed out gay men. We're saying it's illegal under California law."

Great Republic President Bill Pritchett, who sent the memorandum to company agents, could not be reached for comment. Chris Hess, a company spokeswoman, denied that the firm was discriminating against gay men, and said an official statement was being prepared.

In a letter sent by Pritchett to company agents last December, Pritchett said the company, which offers health insurance, was trying to avoid covering "extra-high-risk insureds" such as AIDS patients.

After stating that the company had developed a "profile" of the potential AIDS victim, Pritchett asked agents to give a supplementary questionnaire to

single males engaged in "occupations that do not require physical exertion."

The questionnaire asks whether the applicant has had a weight loss or gain of 10 pounds or more during the past 12 months; experienced any symptoms or complaints or other deviations from good health during the past six months; or has "had, been diagnosed, or treated, or been advised to be tested for any sexually transmitted disease or immune disorder."

An applicant answering "yes" to any of the questions should be rejected for insurance. Pritchett advised his agents.

"These questions," the lawsuit charged, "are so generally stated that virtually no truthful 'special' applicant could deny them all. In effect, then, [the firm] rejects all these applicants."

Peter Groom, a lawyer with the California Department of Insurance, said the company's policy appeared to violate the state law prohibiting discrimination on the basis of sexual orientation

in the availability of insurance.

Groom said that even before the lawsuit was filed, the state agency had told Great Republic that from a brief inspection the guidelines looked like they were discriminatory.

California insurance law, in addition to barring antigay discrimination, prohibits use of the HTLV-3 antibody test to determine insurability. Groom said the department has interpreted this law to even bar companies from asking whether an applicant has taken the test.

The Great Republic lawsuit was filed on behalf of David Hurlbert, a San Francisco gay man who applied for and received medical insurance from Great Republic in October 1985. When Hurlbert reapplied this January, he was asked to answer the supplementary questions. When he refused, Great Republic rejected him.

In addition to an injunction against the policy, the lawsuit seeks damages for the additional insurance expenses Hurlbert incurred elsewhere, as well as \$100,000 for pain and suffering and \$10 million in punitive damages. ●



NGRA's Ben Schatz

Legal Challenges To AIDS Patients' Wills Seen on Rise

Shock Over Lifestyle, Grief Prompt Families' Suits Against Partners

Mental Capacity Issue

By CAROL ANGEL

For 2½ years, Jim Wood took full care of his lover, Dennis, who was dying of AIDS. He stayed constantly by Dennis' side when he was in the hospital, even sleeping there, and relieved the nurses of much of Dennis' care.

Before Dennis became ill, he and Wood lived and worked on a farm owned by Dennis and his family in the tiny village of Egg Harbor, Wisc. But their homosexual relationship became known shortly after Dennis got AIDS. As a result, Wood says, they were kicked off the family farm.

During Dennis' long illness, he eventually became reconciled with his relatives. They frequently expressed gratitude for Wood's ministrations — so much so, says Wood, that they promised Dennis on his deathbed not to contest his will, which left most of his property to Wood. (Wood did not disclose Dennis' last name.)

But as soon as Dennis died last December, the picture changed. "At first, everything was fine. But all of a sudden, his family tried to blame me for his death," Wood told *The Daily Journal*.

"First they tried to get money out of me. They said they'd just put me through two years of hell if I didn't settle. Then when I was about to give them a cash settlement, they upped it. So my lawyer said to forget it — we'd go to court," said Wood.

He added, bitterly, "At first everybody was so for me. At one time I was God to them, because I took care of him so well. But now that he's gone, I'm just nothing."

Egg Harbor has a population of only 238 people. But what happened to Wood in Egg Harbor is also happening — with increasing frequency — to homosexual men in New York, San Francisco and Los Angeles, where AIDS has struck most viciously.

Growing Number of Cases

Attorneys in those cities are seeing a growing number of will contests and other fights between blood relatives of AIDS victims and the victims' friends and lovers.

The challenges are usually based on the victims' competency when the will was made out, since loss of mental capacity is a common occurrence in AIDS cases.

And the challenges aren't limited to cases in which there is a big estate, but arise even when the victim dies destitute. In such situations, the battle may concern who should make decisions about where and how burial is to take place.

"Often there has been a liquidization of assets just to survive and pay medical expenses," says attorney Clint Hockenberry, who administers the San Francisco AIDS Legal Referral Panel.

"In those cases, the contests we see are over who gets possession of the remains. Quite often there isn't anything to fight over except the body," said Hockenberry.

According to Benjamin Schatz, the director of the AIDS Civil Rights Project of the National Gay Rights Advocates in San Francisco, "It gets even broader than that. A man here, who had taken care of his lover for a couple of years, called me. His lover had been completely out of touch with his family.

"His lover died on Friday. He didn't leave a will. On Saturday, the blood relatives came and kicked him out of the apartment.

"But the worst call I've gotten was from a man in Oklahoma whose lover had just died, without leaving a will. The family wouldn't even let him in the house to get his own AZT."

Not Based on Greed

Fights such as these are more likely to be based on deeply felt emotions than on greed. They may even provide a catharsis for the survivors.

But they take a high toll, both financially and emotionally. As a result, lawyers who work with AIDS patients are anxious to find ways to prevent them.

San Francisco lawyer Gary J. Wood (not related to James Wood), who chairs the AIDS referral panel in the city, notes the emotional aspects of such contests. "In large estates, they're fighting over money. But other than that, there's also jealousy about this lover person that's involved in this guy's life, and the family feels that's wrong."

Hockenberry says other factors enter into the conflict. "Sometimes it's a contest of cultures or family background. The family might come from the Midwest and, first of all, not know the son was gay; second, that the son had AIDS and third, that the son had a lover. It's sort of a triple whammy.

"They blame the lover for giving the son AIDS and bringing him out. So there's a lot of anger there — almost all of it misdirected," notes Hockenberry.

Attorney Denise McWilliams of Gay & Lesbian Advocates & Defenders, a public interest law firm in Boston, says, "Even if the assets are minimal, the emotional energy generated by somebody's death from AIDS — particularly where the family was estranged because of the deceased's sexual orientation — is intense."

AIDS Will Contests on Rise as Patients' Families Fight Lovers

Continued from Page 1

McWilliams continues. "My personal feeling is that estate cases frequently take on the emotional remains of whatever was going on during the person's life. So they're charged with a tension you don't normally see in other sorts of cases. There's a lot of guilt, a lot of anger, a lot of resentment involved."

"I think people frequently try to work those emotions out through a will contest. It makes them more difficult to settle, because you're no longer talking about who has a right to the car, who has a right to the stereo. You're talking about, 'You abandoned him 15 years ago,' versus, 'If it weren't for you, my son would be married and have children.' That's a lot of what's being played out over the couch, over the television set."

Put Wills in Writing

In contests over who gets possession of the remains, says Hockenberry. "The family says, 'We have a family plot back home. He's our son, we want him to be buried there.'"

He says the best way to carry out one's desires is to put them in writing before it's too late. "I would put down that I want to be cremated, want my ashes spread in San Francisco Harbor and would want my lover to be involved with that."

Experts agree that putting things in writing — in the form of well-drawn wills, as well as powers of attorney to make medical decisions — is the best way for gays to avoid problems.

Both Los Angeles and San Francisco have legal referral services that use volunteer attorneys to draft basic wills free for AIDS patients who can't afford to hire a lawyer.

In the Bay Area, 260 attorneys are connected with the AIDS Legal Referral Panel. The panel even has a "Wills on Wheels" service, sending lawyers to hospitals in emergency situations.

Gary Wood says there are fewer contests in the area because more AIDS sufferers are getting wills.

"But we still do have will contests and we

hear some pretty stupid arguments," says Wood. For example, he cites a recent case in which he represented a client whose lover, immediately after being diagnosed with AIDS, committed suicide by jumping out of the hospital window.

The victim's mother and brother went to the police and tried to get murder charges filed against Wood's client. The police, after investigating the matter, refused. But in the meantime, the relatives used the investigation to challenge the victim's designation of the client as life insurance beneficiary, as well as the will — which Wood describes as "airtight."

"The will contest took three years and cost a fortune to both the estate and the relatives, and the relatives ended up taking no more than they would have gotten anyway," claims Wood.

Dr. Griffith D. Thomas of Sherman Oaks, who is both a physician and a lawyer, says wills and powers of attorney ideally should be executed before the onset of any illness.

"Hospitals usually accept a durable power of attorney. You shouldn't wait to draw one until you have a serious illness," says Thomas, a founder of the Los Angeles County Bar Association AIDS/Hospice legal referral project, which currently has 160 volunteer lawyers.

Thomas helps train the volunteers and gets feedback from them in the process. "Attorneys on the panel say the most important thing they deal with is people calling us too late."

"If a diagnosis of AIDS is made, it's a good thing for people to start looking into drawing up the necessary documents. If you wait until the person is in extremis, the chances of drawing up a good document is compromised."

Although that is true of many medical conditions, it's especially true with AIDS. "About 60 percent of AIDS victims will have central nervous system involvement by the time they die," according to AIDS expert Dr. Nelson Garcia of the University of California/Irvine Medical Center.

"And about 40 percent, by the time they die, will show some manifestations of AIDS dement-

tia syndrome — intermittent episodes of confusion, forgetfulness or hallucinations," notes Garcia, a member of the Orange County Medical Association AIDS Task Force.

Under California law and the law of most states, the only way of invalidating a properly executed will is to prove the person was incompetent or under "undue influence" at the time the will was signed.

Normally, testamentary incapacity is a difficult thing to prove. "It's especially difficult in California, where capacity to make a will is not necessarily judged by the same standard as capacity to manage one's financial affairs, for instance," says Santa Monica attorney Janice Stone, who has written a number of wills for AIDS sufferers.

Mental Capacity Challenges

Nevertheless, the high incidence of the dementia syndrome in AIDS sufferers increases the likelihood of challenges to mental capacity, says Boston's McWilliams.

McWilliams directs GLAD's AIDS Law Project. She notes, "Gay people have always had greater difficulty disposing of property by will than heterosexual couples have, for obvious reasons, because of the family's response to people's sexual orientation and so forth."

"But what AIDS has done, most notably in the case of gay men, is to give people who are unwilling to accept the chosen sexual identity of a family member another argument to point to — the supposed lack of mental competency of someone diagnosed with AIDS."

"In many ways, it's not qualitatively different from the standard attacks on wills — undue influence, fraud and so on. But now it has a new twist that comes up more frequently with this population, and we are seeing more cases of biological family members contesting their relatives' wills."

Adds Gary Wood, "Some patients are in and out of competence over long periods of time. It's possible that at the time the will was executed, they were competent. But once a diagnosis of incompetence has been made, it's pretty hard to prove competence thereafter, even though the burden of proof is on the person contesting the will."

AIDS patients' inability to admit they are dying also makes the issue more common, according to Hockenberry. "Quite often the denial is such that we have to write the will in the hospital."

"In an emergency situation, our attorneys have pointers they follow. If the person is lucid at the time he is working on the will, the will should be OK. But you have to be able to document that the person is competent, by a doctor's report or by taking copious notes and

asking certain questions.

"If the person is able to answer, at that point there's no guarantee — but at least you can be a little bit more sure if you've taken the proper steps."

Longer Life Span

Improvements in medical treatment may have complicated the problem, Stone adds. "It appears to me that AIDS patients, with the help of medical treatment, are living longer. That's just a layperson's opinion, but we've had clients who have managed to sustain some form of life for two or three years."

"In those cases, very often by the time the illness is really approaching death, the person does lose capacity. I've prepared wills for people who certainly had capacity when they made the will, but may have lived as much as another year or two. And toward the end, I've seen the virus attack the brain."

In cases where there may be some question as to competency when the will is executed, McWilliams suggests, "It is always useful to have the medical care people make a notation in the person's chart, attesting to their mental competency."

"The more specific it is, the more helpful — delineating medications the person is on, noting they do not affect the person's competency and so forth. And if they can, they should do things such as 'alert, oriented as to time, date, place and manner' — again, just to document the person's testamentary capacity."

McWilliams and others also suggest videotaping the signing of the will, if the resources are available. But McWilliams adds, "There are two minds about that. I'm less of a fan of videotaping than others, because of the way a person looks in the advanced stages of the disease — when they've lost a lot of weight, look very gaunt and so forth."

To date, there apparently are no reported appellate opinions dealing with wills of AIDS victims. Attorneys say most of the cases eventually get settled, and those few that have gone to trial have not yet been decided on appeal.

One Witness

In Jim Wood's case, his lover's will was witnessed by only one person. Thus, under Wisconsin law, it could be challenged on that basis as well as for alleged undue influence.

"They say I've forged things," says Wood. "They said there was no reason for me to have power of attorney for him for 2½ years, that I must have done something to make Dennis do it, that I must have brainwashed him."

Wood says harassment and bias against him in the village have gotten so bad that he's planning to move to another town. In the mean-

time, the will contest is still pending.

If the matter goes to trial, Wood can introduce evidence of Dennis' intent to leave the property to him, and Dennis' relatives will have the burden of proving their claims.

Wood's says his counsel will try to get apausal support and damages for mental anguish for him, even though the attorney "doesn't think they will win. But I want to make a point so that everybody will know what can happen. So it doesn't happen to anyone else."

Wood concludes, "The most important thing is to get the word out — the promises of a family don't mean anything."

Social Club Looking to Third Year

MONDAY
JANUARY 29, 1990

LOS ANGELES TIMES

Marilyn Wolff celebrates the second anniversary of her Single Diners Social Club next month. Her idea of offering restaurant dinners to small groups of singles several times a month has attracted a loyal following, and she has added brunches and trips to the schedule.

"I started the group because I was looking for a non-threatening, no-meat-market place to go where I would be comfortable," Wolff said. "I knew that singles like to dine out but they don't like to dine alone."

She draws 20 to 60 people to events, which vary from ethnic to elegant. She tries to get a separate room or end of a room when possible and groups the singles around a few large tables. "I've found that open seating works best," Wolff says. No seats are assigned; guests mingle during a half-hour social time and then decide where to sit, and with whom, themselves. At the end of the evening, as some people leave, the group tends to gather at one table to continue chatting.

Although Wolff started out targeting the mid-20s to mid-40s singles, she has found that a more realistic grouping is late-20s to late-40s and draws a good cross-section of ages. Wolff has a mailing list of 800 who receive regular announcements of her events and discounts on prices. Yearly membership is \$25.

The club's upcoming travel itineraries include a day trip to Julian, a weekend to San Simeon and a cruise to Ensenada.

Valentine Champagne Brunch (Single Diners Social Club, Bellevue French Restaurant, 101 Santa Monica Blvd., Santa Monica, 12:30 p.m., (213) 934-0504). Reservations required. \$24.

FRIDAY

"Living Alone vs. Living With Another Person" (Discovery Singles, Neighborhood Church, 301 N. Orange Grove Blvd., Pasadena, 7:30 p.m., (213) 256-8070). \$5.

Cocktail Party (Young Executive Singles Network, Reuben's Restaurant, 4211 Admiralty Way, Marina del Rey, 8 p.m., (213) 657-5500). \$17.

SATURDAY

"Encounters of the Psychic Kind" (Roundtable Singles, 157 S. Roosevelt Ave., Pasadena, 7:30 p.m., (818) 578-1209). \$5.

SUNDAY

"Male/Female Mystiques and Mistakes" (Seminars For Singles, Neighborhood Church, 301 N. Orange Grove Blvd., Pasadena, 7:30 p.m., (213) 223-1130). \$10.

Dance Party (Jewish Assn. of Single Professionals, Warner Center Marriott, Tickets Lounge, 21850 Oxnard St., Woodland Hills, 6 p.m., (213) 305-8889). Members \$14, non-members \$17.

Tea Dance (Wise Singles 45+, Stephen Wise Temple, 15500 Stephen Wise Drive, West Los Angeles, 1 p.m., (213) 473-1391). Members \$5, non-members \$8.

Dance Party (Advanced Degrees and Young Singles With College Degrees, Red Lion Inn, 3050 Bristol Blvd., Costa Mesa, 7 p.m., (818) 348-1747). \$15.

ONGOING SUPPORT GROUPS

Support Group for Separated, Divorced and Widowed Men and Women (offices of Ken Unmacht, 12304 Santa Monica Blvd., Suite 108, West Los Angeles, 8 p.m., (213) 207-1246). Every Tuesday, \$15 . . . Father's Rights of America (Holiday Inn, San Diego Freeway and Roscoe Boulevard, Northridge, (818) 789-4435). Help with problems of divorce: child custody, visitation and support. Every first and third Wednesday. \$5 . . . "Trusting Ourselves, Trusting Others" (Counseling Center of West Los Angeles, 2100 Sawtelle Blvd., Suite 303, West Los Angeles, (213) 479-3779). Fridays at 6 p.m. . . Burbank/Glendale Support Group for Separating, Grieving and Divorced Singles (Neighborhood Church, 801 S. 6th St., Burbank, 6:30 p.m. (213) 221-9012). Friday . . . Awareness and Acceptance (offices of Janis Weiner and Zena Bartholomew, 419 Ocean Ave., Suite G, Santa Monica, (213) 470-4944). Counseling/support group for single women. Every Monday. \$20 . . . Catholic Support Group for Separated, Widowed, Divorced (St. Mel's Catholic Church Auditorium, 20870 Ventura Blvd., Woodland Hills, 8 p.m., (818) 888-2158). First and third Fridays . . . Single Working Women's Support Group (Offices of Linda Wake, 12401 Wilshire Blvd., Suite 200, West L.A., 7:30 p.m., (213) 651-3755). Every other Wednesday or Thursday. \$20 . . . Singles Support Group (WE CARE, First Congregational Church, 466 E. Walnut St., Pasadena, 7:30 p.m., (818) 963-5220). A support group for divorced, separated or widowed men and women. Every Friday. \$4 for non-members . . . One Again (Canoga Park, (818) 347-6456; Simi Valley, (805) 522-3542; Westlake Village, (805) 498-7111, and other locations). Weekly, self-help group for widowed, divorced and separated men and women . . . Feeling Connected: A Relationship Workshop (Hartley and Associates Counseling Center, 2100 Sawtelle Blvd., Suite 206, West Los Angeles, 8 p.m., (213) 477-2661). Every Thursday . . . "Women Who Love Too Much" Support

Group (the Psychology and Counseling Center, 15928 Ventura Blvd., Suite 221, Encino, (818) 783-1707) . . . Granada Single Support Group (First Presbyterian Church, 10400 Zelzah Ave., Northridge, 7:30 p.m., (818) 360-1631). Every Thursday . . . Women In Transition (15928 Ventura Blvd., Suite 228, Encino, (818) 986-3072). Every Tuesday at 7 p.m. or every Wednesday at noon.

ONGOING SOCIALS

Singles Dance (Eddie Stell Singles, Gardena VFW Hall, 1822 W. 162nd St., Gardena, 8 p.m., (213) 516-7336). Free dance lessons. Every Tuesday . . . Cultural and intellectual evenings in interesting restaurants (Brainstorms, Sundays, locations vary, (213) 973-2418) . . . Piano Play House (Concert/social in private home in Studio City, 8 p.m., (818) 995-3310). Third Saturday of every month. \$10 . . . Women Meeting Women (16200 Ventura Blvd., Suite 323, Encino, 7 p.m., (818) 906-1822). Social/support group for women seeking new friends. First and third Mondays for ages 38-55, second and fourth for ages 25-37 (also day groups). \$10. Reservations

British Singles and Anglophiles (private homes on Westside and San Fernando Valley. (213) 393-1346). Dates vary . . . Brunch Bunch Plus (Singles Over 40, (818) 353-4017). First Sunday of every month, 11:30 a.m. Third Thursday of every month, 7 p.m. . . Toastmasters Club (Distinguished Singles, Numero Uno Restaurant, 22848 Victory Blvd., Woodland Hills, 6:30 p.m., (818) 907-6385). First and third Thursdays.

ONGOING DISCUSSIONS

Discussion Group (South Bay Singles, 2847 W. 226th St., Torrance, 7:30 p.m., (213) 534-1149). First and third Wednesdays. \$5 . . . Discussion Group (Discovery, Unitarian Universalist Church, 5450 Atherton St., Long Beach, 6:30 p.m., (213) 597-8445). Every Sunday. Nominal fee . . . Rap and Social (Roundtable Singles, 157 S. Roosevelt Ave., Pasadena, 7:30 p.m., (818) 578-1209). Every Saturday. \$5 . . . Bel Air Singles 40+ (Bel Air Presbyterian Church, 16221 Mulholland Drive, West Los Angeles, 8 p.m., (818) 788-4200). Speakers and musical programs. Second and fourth Fridays.

ONGOING SPECIAL ACTIVITIES

The Tennis Players (213) 275-8410). Tennis tournaments, socials, trips. Dates vary . . . Marina Singles Sailing Club (Burton Chace Park, end of Mindinao Way, Marina del Rey, 10 a.m., (213) 397-1929). Get-acquainted social and sail. Every second and fourth Sunday . . . Bridge Party (Singles 50+, private home in West Los Angeles, (213) 398-9649). Evenings and weekends. \$3 . . . Bridge (Monday Night Social Bridge Group, 8345 Hayvenhurst Pl., Van Nuys, (818) 886-9237). Every Monday at 7:30 p.m. \$3.50 . . . Folk Dancing (Pasadena Folk Dance Co-op, Throop Memorial Church, corner of Los Robles and Del Mar Avenues, Pasadena, 7:45 p.m., (818) 300-8138). Beginners welcome. Every Friday . . . Singles Ballroom Dance, (Gardena Elks Lodge, 162nd and Western avenues, Gardena, 8 p.m., (213) 516-7336). Lesson followed by dancing to live band. \$3 . . . L.A. Community Action Network Singles for Charity, (213) 459-4665). Community service project with socializing . . . Par-Tee Golf Singles (Union Federal Bank Bldg., 15962 Ventura Blvd., Encino, (818) 345-8978). Third Wednesdays . . . Dance Mixers (Psalm 30-11 School of Dance, 530 E. 4th St., Long Beach, (213) 436-1322). Sundays (ballroom) at 6 p.m., Fridays at 8 p.m. \$5 . . . Single Ski Club (Joe Petrelli's Steak House, 5614 Sepulveda Blvd., Culver City, 8 p.m., (213) 838-5435). First, third and fifth Wednesdays . . . "A Little Night Music" (Live Chamber Music for Single Music Lovers, Santa Monica home, 8 p.m., (213) 395-2025). Last Saturday of every month. \$9 includes refreshments . . . International Hootenanny (Picas Club, Marina del Rey, (213) 821-1612). Fourth Friday of every month. \$5 . . . Burbank Toastmasters Club (King Swede Restaurant, 3001 W. Magnolia Blvd., Burbank, 6:30 p.m., (818) 843-7311). Second and fourth Wednesdays . . . Singing Group (Singing Singles, Palms Recreation Center, 2950 Overland Ave., Palms, 7:30 p.m., (213) 391-4184). Every Tuesday. No auditions . . . Singles Horseback Ride, Brunch and Horse Show (Picas Club, Griffith Park Equestrian Center, (213) 821-1612). Third Sunday . . . Outdoor activities (Sierra Club's 20s and 30s Singles, West Wilshire Recreation Center, Fairfax District, 7:30 p.m., (213) 932-8375). Hikes, camp-outs, bike rides. Second Thursday . . . Singles Social Bridge Club (Oakwood Apts., 15454 Sherman Way, Van Nuys, 7:30 p.m., (818) 886-9237). Intermediate and advanced

players. Every Monday. \$3 . . . Singles Walk-A-Bration (La Canada, 9 a.m., (818) 790-2726). A pleasurable walk for singles of all ages. Every Saturday and Sunday.

ion regarding singles events held three weeks in advance to call. Los Angeles Times, View Post, Times Mirror Square, Los Angeles, Calif. (213) 617-1111

Whose Life Is It?

Family and Lover Battle Over the Care of Paralyzed Woman

By BETTY CUNIBERTI,
Times Staff Writer

Sharon Kowalski, a 31-year-old woman who loved to golf, fish, ski, play basketball and ride motorcycles, now lies in a Minnesota nursing home, a profoundly brain-damaged paraplegic barely able to speak or move.

But around her rages a vicious, four-year court battle over her custody between her father and a woman who says she is her lover.

Donald Kowalski, a retired iron miner, has won guardianship of his daughter in court and has barred her former roommate, Karen Thompson, from seeing her since 1985.

Thompson, however, has made unceasing attempts through the courts to gain access to Sharon. She disputes some doctors' assertions that Sharon has the mental capacities of a 6-year-old and argues she may have sufficient presence of mind to help decide who should care for her.

If Thompson, a 41-year-old physical education professor, can gain guardianship of the woman she considers her spouse, the verdict could affect hundreds of similar cases in which homosexuals or disabled individuals are seeking broader interpretations of their civil rights.

A Family in 'Hell'

In interviews this week, Donald Kowalski called Thompson "an animal," and said he does not think his daughter was or is a lesbian.

"I don't feel like I should be forced into believing Karen Thompson," said Kowalski, 57. He spoke softly, sadly as he recounted the "hell" his family has been through since the 1983 accident, in which a drunk driver in a pickup truck struck Sharon's car, severely injuring her and killing her niece, Melissa, 4.

Since then, Kowalski said he has suffered two heart attacks. His wife, Della, was treated in 1984 for "moderately severe depression," which caused "sleeplessness, weight loss, lack of energy and chronic anxiety," a court document said.

Kowalski, one of the 1,408 residents of Nashwauk, Minn., said he thinks it is unimportant whether his daughter is a lesbian: "What difference does it make, in Sharon's condition?"

"I don't believe in that life style but I would not disown our daughter [if it were



JEAN PIERI / St. Paul Pioneer Press

monitor showing tape of the two in a nursing home.

true]. The good Lord put us here for reproduction, not that kind of way. It's just not a normal life style. The Bible will tell you that."

When asked if he found his daughter's mental capacities to be those of a 6-year-old, Kowalski said: "You want my opinion? What difference does it make? She's in diapers, she can't talk, she can't even turn herself. Really, what difference does it make if she's 80 or 32? She's not consistent. Her mind is all over the place."

Parties from both sides agree Sharon's short-term memory is impaired. Her sister, Debbie, said she has told Sharon repeatedly that her niece is dead and cannot visit her. But Sharon never remembers.

Thompson, nonetheless, said Sharon "is not a child," and noted that Sharon has typed, "Karen, make love to me," for her former companion before she was banned from visiting her. Sharon also "startled" a Minnesota newspaper reporter, who, on a 1987 visit, asked her what her favorite flower was, "and she laboriously types out 'columbine.'"

Thompson feels it is discrimination

against the handicapped to assume they are non-sexual; the Kowalskis, however, have brought individuals to court to testify Sharon is in danger of sexual abuse if Thompson is allowed to visit.

That is a charge Thompson, a St. Cloud State University professor, angrily denies. She said Kowalski is part of a "rich, white, heterosexual, able-bodied, Christian, male system, which oppresses anyone who's different."

Thompson, who once was nervous when speaking to her classes and was a lesbian so deep in the closet that she did not even mention the word *gay* to her lover, has undergone a transformation.

To underscore her wish to care for Sharon, Thompson revealed their lesbian relationship to the Kowalskis, and, soon after, to audiences nationwide.

Thompson has become a feminist lesbian activist, giving speeches across the country to raise money for her legal bills and to encourage homosexual couples to make out

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KOWALSKI: Custody Battle Over Care of Paralyzed Woman

Continued from Page 1
living wills. She said she has written a book about her experience to be published this fall.

Support committees for her cause have sprung up in several cities. On Sunday—the eve of Kowalski's 32nd birthday—lesbian, gay and disabled activists plan to draw national attention to the matter by staging various events in more than a dozen places, including Los Angeles, to "Free Sharon Kowalski."

Thompson's public campaign has infuriated the Kowalskis. Sister Debbie, whose daughter was killed in the accident that so severely injured Sharon, bitterly noted that Thompson admits she had an abortion years ago.

"If she killed her own baby," she said, "what would she do with Sharon if she found out Sharon wasn't everything she thought she could be?"

Reacting to that statement, Thompson's words flowed in rapid bursts of frustration and anger. She accused the Kowalskis of "attacking me physically and verbally" for five years.

Abortion Was a 'Mistake'

She then addressed the question directly, calling her abortion a mistake: "I've spent my life questioning that decision and I've settled that between me and my God. It's no one's right to judge me for that."

"I love Sharon Kowalski and I want to see her develop as far as she can."

Kowalski is as fiercely dedicated to his battle as Thompson is to hers. He will fight her in court, he said, "till they cover me up in the ground."

Thompson said she and Sharon secretly had made a life commitment to each other. They had exchanged rings and had taken out life insurance, naming each other as beneficiary, just as a married couple would.

Thompson wants all the same rights with Sharon that she would have if it were her 31-year-old husband who had been injured. She has been in and out of Minnesota courts more than 20 times trying to get them.

In the courts, Thompson has contended that she has run up

have testified have offered diametrically opposed opinions as to whether Thompson's early visits harmed or helped Sharon.

At the core of her legal battle is her contention that Kowalski is so biased against women and the handicapped—she says he sees them as helpless—that he is not making available to Sharon a full range of rehabilitative care.

Sharon now receives occupational, physical and speech therapy at her nursing home, her family said.

But Thompson has argued that Sharon, if offered more advanced therapy and equipment, might learn to eat more (most of her nourishment now is delivered via a stomach tube). She also said Sharon—who now uses a typewriter, a letter board and whispers on occasion—could communicate better with a computer's help.

Thompson won a minor court victory Wednesday when the probate court in St. Louis County, Minn., ordered Sharon moved from a nursing home in Hibbing, Minn., to a hospital facility in Duluth for the purpose of being evaluated by a team of medical experts.

"Once we get the results we're going to assess them very carefully to see if we have additional [legal] grounds to remove the guardian," said M. Sue Wilson, Thompson's attorney. "Has her father neglected her medical treatment by putting her in a nursing home rather than a rehabilitative facility?"

Kowalski had tried to stop the Duluth evaluation, arguing the move would confuse and scare Sharon. Asked if he thought Sharon needed to be evaluated, Kowalski said, "No, I don't. It's a waste of money. It's just to satisfy Karen Thompson."

In his view, Thompson is seeking "complete control" over Sharon's life and was an upsetting influence on her when she had visited her early on. The Kowalskis, backed by testimony of four doctors, contend that Thompson's visits plunged Sharon into a clinical depression.

A Public Spectacle

Thompson has countered that she was the one who insisted Sharon be evaluated for depression, for which she was not the cause. In court, Thompson admit-

Kowalski is particularly angered because he feels Thompson has made an embarrassing public spectacle of his daughter so she can make money and a name for herself and advance a cause. Even when Sharon was hospitalized in a coma, Thompson asked for her rent money and for \$85.50 to cover her share of a credit card bill, Kowalski claims.

"She never had no tears, unless she gets on TV or in front of an audience and cries for money," he said.

Thompson tells it differently. She said Kowalski approached her in the hospital, wanting to know what Sharon owed her in rent and other bills. Because the couple still were in the closet, Thompson did not want to tip off the Kowalskis by admitting that she had been supporting Sharon.

"They think I'm her landlady," she recalled. "How can I tell them I thought it was my right to take care of her? I was afraid they would guess. They gave me 400-some dollars. I really got rich."

The money she raises in donations to the "Free Sharon Kowalski" committees all goes to her legal bills, which have exceeded \$125,000, Thompson said.

Over the years, various people have visited Sharon and asked her who she wants to care for her. At different times, she has answered "parents" or "Karen T."

Kowalski said Sharon never asks for Thompson. "She don't talk about nothing on her own," he said.

According to court documents, an exchange between Sharon and a Minnesota Civil Liberties Union attorney went like this:

Question: Do you understand that there is a court proceeding going on where decisions are being made about who you get to see and where you live?

Answer: Yes.

Q: Do you feel that your wishes are being made known to the court?

A: No.

A different exchange with a psychiatrist went like this:

Q: Do you want to live with your father?

A: Yes.

Q: Do you want to live with your mother?

A: Yes.

Q: Do you want to live with Karen?

A: Yes.

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