



## Your Fellow Physicians Need You!

December 2018

CAP prides itself on being a physician-owned and governed organization. If you've ever wondered about what that really entails, you may be interested in applying to the CAP Fellows program. This leadership development program is designed to help ensure that our organization remains the very best it can be by preparing a group of select physicians to eventually assume leadership roles.

During this year-long commitment, you will have the opportunity to contribute your ideas on ways to improve the organization for the benefit of your fellow members. In addition to gathering together periodically, CAP Fellows attend committee meetings ranging from Education and Patient Safety, Risk Assessment Peer Review, Finance, Board of Directors, and more.

And here's the best part: in the process, you'll meet smart, dedicated physicians just like you who care

about making CAP, and the protection it provides to physicians, the very best it can be.

"We were thrilled with the high-quality submissions we received during the 2018 application period," said CAP's Chief Executive Officer Sarah Pacini. "The CAP Fellows program continues to garner high praise from current and past fellows, so we want to continue offering this opportunity to others." ➦

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**To learn more about this opportunity and the specific requirements, please send a current CV to CAP's Chief Operating Officer Cindy Belcher at [cbelcher@CAPphysicians.com](mailto:cbelcher@CAPphysicians.com) by January 31, 2019.**

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# Risk Management — and — Patient Safety News



## Dogs in the Office

by Michael Valentine, JD, CPHRM

What do you do when a patient comes into your office with a dog? Tell them to leave? Allow the dog no matter what? The answer is that it depends.

This article will assist physicians and their office managers to:

1. Explain the difference between a "service dog" and an "emotional support animal."
2. Understand the law, rights, and limitations for patients with service dogs or comfort animals.
3. Know what you must, should, and cannot do regarding service dogs and emotional support animals.

Dogs in the office fall into three categories:

- **Service dogs**
- **Emotional support or comfort animal**
- **Pets**

Service dogs are governed by the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), the Unruh Civil Rights Act, and the Fair Employment and Housing Act (FEHA). A service dog is defined as a dog trained to help an individual with a task that is related to his/her disability. Tasks can be related to either physical or psychiatric issues. A few examples are fetching dropped items, alerting to oncoming seizures, and alerting a person with bipolar disorder that he is exercising poor judgment. Disabled persons have a right to bring trained service dogs to all public places, including a medical office.

An "emotional support animal" does not perform a specific task. It is an animal that provides the owner with a sense of calm, well-being, or safety. Emotional support dogs are sometimes brought to hospitals, skilled nursing facilities, pediatric units, etc. because

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of their comforting presence that can actually support recovery. Neither California nor federal law provides protections for service animals or pets and do not require that they be allowed in your office; it is up to your discretion. We do not recommend that you allow pets in the office because it opens the door to a variety of risk and office management issues.

The first step is to determine whether the dog is a service dog by asking, "Is your dog a service dog?" If yes, then you can ask what task the dog is trained to perform (i.e., fetch dropped items). Objectively document the answers in the patient's records ("patient presented with service dog, stated it is trained to pick up dropped items"). You are only allowed to ask whether the dog is a service dog and what task it performs. You cannot ask the patient to "prove" that it is a service dog. Though there are no registration, certification, or identification requirements, falsely claiming a dog is a service dog is a misdemeanor.

Regardless of whether an animal is a service dog, emotional support animal, or pet, the animal must be under control, leashed at all times, and it cannot pose a threat to others. Size, breed, and other issues are not relevant. Only the individual dog's behavior can be considered and breeds with a "bad reputation" cannot be excluded. Service dogs should not be played with by staff, as they are not considered pets.

If a dog is filthy, infested, unruly, or aggressive, you may ask the owner to take the dog outside. Be sure to objectively document the behavior and the discussion.

Reasonable accommodations for the service dog must be made, but you are not required to walk, entertain, or clean up after the dog. The animal is entirely the owner's responsibility.

If other patients are allergic to dogs, then reasonable isolation precautions must be taken to accommodate everyone. You cannot exclude a service dog because another patient has a dog allergy.

In no event should dogs be allowed in sterile settings such as operating rooms because of the risk of infection.

Signage notifying patients is recommended. Always make sure that staffs' actions are consistent with signage and policy, as well as uniformly applied.

Please call the CAP Hotline at 800-252-0555 if you have any further questions. ➦

*Michael Valentine is a Senior Risk Manager for CAP. Questions or comments related to this article should be directed to [mvalentine@CAPphysicians.com](mailto:mvalentine@CAPphysicians.com).*



# CURES–Compliant Prescription Pad Printing

by Gabriela Villanueva

While many states have begun to require that all controlled substances be prescribed electronically as a means of addressing the public health and safety crises associated with prescription drug abuse, that practice has not been established in California. Unless mandatory e-prescribing becomes the norm in California, other safety measures will attempt to safeguard the system.

One such measure stems from legislation passed this year to create a structure for the California Department of Justice's Security Printers Program.

Currently, the California Department of Justice's Security Printers Program regulates the third-party printing of prescription pads. AB 1753 by Assemblyman Evan Low (D-Santa Clara) has granted the Department of Justice the authority of regulate vetted vendors selected to manufacture prescription pads by adding new controls, including limiting the number of vendors the state approves for printing, and linking uniquely serialized pads with the Controlled Substance Utilization Review and Evaluation System (CURES). The new regulations are intended to help combat fraudulent prescriptions and create stricter reporting controls by vendors as conventionally produced pads are very difficult to track by law enforcement.

The California Department of Justice has put up a link with the approved list of vendors who operate security prescription printers. The goal of the new legislation's provision for an approved list of printers is to ensure the correct ordering, delivery, use, and reporting of prescription forms for controlled substances.

Among an extensive list of requirements for vendors, physicians should know:

- Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges that permits the prescribing of controlled substances with the federal Drug Enforcement Administration (DEA).
- Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature acknowledging receipt of the package and

provision of that signature to the security printer. Controlled substance prescription forms provided in person shall be restricted to established customers. Security printers shall obtain photo identification from the customer and maintain a log of this information. Controlled substance prescription forms shall be shipped only to the prescriber's address on file and verified with the federal Drug Enforcement Administration or the Medical Board of California.

- Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.
- Security printers shall produce ordering and delivery records upon request by an authorized officer of the law.
- Security printers shall report any theft or loss of controlled substance prescription forms to the Department of Justice via fax or email within 24 hours of the theft or loss.



Here's the list of California Department of Justice approved vendors for security prescription printers: <https://oag.ca.gov/security-printers/approved-list>. ➔

*Gabriela Villanueva is CAP's Public Affairs Analyst. Questions or comments related to this article should be directed to [gvillanueva@CAPphysicians.com](mailto:gvillanueva@CAPphysicians.com).*





## Asset Protection: Personalized Attention for CAP Physicians

CAP Agency certainly hopes you and your family were not affected by the recent fires in California. When disasters like this happen, it is always an opportunity to reflect on your personal insurance. Once we get the coverage for our homes, we often forget to review it regularly to make sure we still have the protection we need if something were to occur. We want to be sure if something does happen, you will be able to replace your home and all personal assets.

When it comes to protecting your personal assets, you deserve the same expert, trustworthy, personalized attention from your insurance broker that you give to your patients. That is why CAP Physicians Insurance Agency has partnered with Integro's Private Client Group as your strategic partner committed to delivering superior service. We are available whenever you need us, and confidentiality is always guaranteed. Laura Schneider is our Integro personal lines expert who will review your program on an ongoing basis to evaluate potential revisions in response to economic changes, market trends, or changes in your needs.

### Custom Services Designed for Cooperative of American Physicians

Significant personal assets require higher levels of protection, often with uncommon coverage requirements not available on standard policies. Because your needs are unique, we work with you to create a plan designed specifically for you.

As a Cooperative of American Physicians member, you are eligible to receive an offer for a variety of personal, traditional, and specialty coverages, including:

- Home and Auto
- Vacation Homes and Rentals
- Fine Art, Jewelry, and Collections Including Wine
- Recreational Vehicles
- Yachts and Watercraft
- Private Aircraft
- Gentleman Farming and Wineries
- Personal Umbrella provided through CAP's Group Program

### Group Personal Umbrella

Most of us do not like to think about the possibility of something bad happening to us or our family such as an automobile accident, slip and fall, or someone drowning in your pool. Bad luck can strike at any time and inadequate liability insurance coverage can prove to be financially devastating.

As a physician-owned cooperative, CAP is able to secure exceptionally competitive rates through a Group Personal Umbrella Insurance Program with A+ carrier Chubb, which sits on top of your homeowners and automobile coverage to ensure you have adequate protection. This coverage applies to all family members living in your residence.

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For example, as a member of CAP you can purchase a policy that provides three million in excess liability coverage for \$675 per year. Additional limits are available at similar advantageous pricing for up to 20 million dollars in excess liability coverage. CAP's Personal Umbrella coverage also includes, at no additional cost, one million dollars in uninsured and underinsured motorist coverage. No underwriting is required, just complete the enrollment forms, pay the premium, and you are covered. It's that easy!

If you would like to learn more about these fantastic coverages, you may go to the CAP website at [www.CAPphysicians.com](http://www.CAPphysicians.com) and click on "Risk Management-Personal" to review coverages and complete an online application, or call us at 800-819-0061. ➦



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## Medical Board of California Death Certificate Project: How It Can Impact You

According to the *Medical Board of California 2017-2018 Annual Report*, the Board's Enforcement Program received 10,188 complaints against physicians, surgeons, and unlicensed individuals. This reflects an increase of 1,269 complaints (nine percent) over the prior fiscal year. The Board also referred 504 cases to the Attorney General for further action, an increase of more than 18 percent over the prior year.

This increase in enforcement activity has been driven in part by the Board's Death Certificate Project. The Death Certificate Project was born out of vetoed legislation that would have required coroners in California to report deaths resulting from prescription drug use.

The project utilizes California death record data to identify physicians that may be inappropriately prescribing opioids to their patients. The Medical Board of California, in collaboration with the California Department of Public Health, has been using the project as an additional tool to investigate physicians who may have violated the law.

According to a November 6, 2018 article in *MedPage Today*, the Medical Board of California recently filed accusations against 11 physicians. These accusations

are based on the Death Certificate Project and involve patients who were prescribed narcotics and had fatally overdosed years ago. For a full copy of the article, visit <https://www.medpagetoday.com/publichealthpolicy/generalprofessionalissues/76160>.

As a CAP member, your MedGuard Plan provides reimbursement of up to \$25,000 for legal expenses arising from disciplinary proceedings, allegations of fraud and abuse, or alleged regulatory noncompliance. However, in light of the Medical Board of California's Death Certificate Project and increased enforcement activity, this amount of coverage may not be adequate, and physicians may want to consider purchasing additional coverage for optimal protection. MEDEFENSE® Plus coverage provides \$1 million in policy limits, and coverage for fines and penalties, as well as defense costs. It also provides protection for billing errors and omissions including governmental agencies and private payers.

Contact CAP Physicians Insurance Agency today 800-819-0061 or [CAPAgency@CAPphysicians.com](mailto:CAPAgency@CAPphysicians.com) to find out more about this excellent coverage to help ensure you have the protection you need. ➦





## Five Human Resources Benefits to Start the Year Off Right!

As an organization run by and committed to the success of our physician members, CAP offers you a full array of services beyond your medical professional liability coverage to help you operate a safer, more successful medical practice. Human Resources support is just one example of those services.

If you haven't taken advantage of these five HR-related CAP offerings, there's no better time than the launch of the new year to start maximizing productivity, fostering positive morale, and protecting your practice:

**1. Free HR Consultation.** CAP physicians and their office administrators can call one of CAP's own HR executives during normal business hours for expert consultation and advice on any HR-related issue – no matter how big or small. We're here to help you with questions regarding termination, discrimination, wage and hours, employee misconduct/performance problems, leaves of absence, and all other HR issues that you might encounter.

**2. Customizable Human Resources Manual.** CAP's Human Resources Department offers a free customizable human resources manual designed to

assist you in providing appropriate office policies for the management of your employees throughout the employment cycle. This comprehensive, customizable manual is designed exclusively for medical practices and is updated annually to keep you abreast of current laws.

**3. Paylocity.** If you're in need of outstanding payroll and HR support, including benefit administration, talent management, time and labor management, applicant tracking, performance reviews, and more, we encourage you to consider Paylocity. Paylocity simplifies how you perform everyday payroll and human resources tasks with one smart online system that streamlines your processes, saves time, and reduces redundancy. As a CAP member, you're entitled to significant discounts on à la carte services. For more details, contact Denise Figone at Paylocity at [dfigone@paylocity.com](mailto:dfigone@paylocity.com) or 415-975-1435.

**4. EPLI Coverage.** Practices of all sizes are vulnerable to employment-related claims, including wrongful termination, discrimination, and harassment, to name a few. Through the CAP Agency, you can apply for an

# Case of the Month

by Gordon Ownby



## Curbside Consults and EHR

If there is a list somewhere of phrases that will spur disagreement among physicians, certainly “curbside consult” would be included. One case shows how easy access to electronic health records can affect how involved a physician will be perceived in a particular case.

A young mother was on hospital premises with her son, who was being treated for Mast Cell Activation Syndrome. The mother began to experience acute illness and self-injected two doses of epinephrine, which she carried because of her own history of anaphylaxis.

She was then evaluated in the hospital’s emergency room, where she injected herself with a third dose of epinephrine. On evaluation, Dr. ED, the emergency department physician, noted the patient’s history of recurrent unilateral vision loss and a tightening throat. Dr. ED’s initial impression was that the patient’s extreme agitation was not consistent with anaphylaxis.

Dr. ED contacted Dr. N, the neurologist on stroke call that day. Dr. ED and Dr. N discussed the patient’s condition and at one point, Dr. ED asked Dr. N whether she should call a “code stroke” for the patient. Dr. N recommended instead that Dr. ED obtain a brain MRI, which Dr. ED ordered STAT. Dr. ED evaluated the patient again at 6:30 p.m. and noted the patient was more altered, had bitten her tongue, and would need sedation for the upcoming MRI. Though the MRI was degraded by significant patient movement, the radiologist interpreted the

study as negative for stroke. Dr. ED admitted the patient to the ICU at 9:30 p.m.

The patient continued to deteriorate and required intubation overnight. A lumbar puncture and an EEG on the patient’s second day were inconclusive and another brain MRI was undertaken on day three. That scan revealed the young woman had suffered an acute infarction of the pons and thalamus. As a result, the patient suffered “locked-in syndrome.”

The patient and her husband sued the hospital and numerous physicians involved in her care over those first three days.

One issue of the multi-faceted litigation was the extent of Dr. N’s responsibility to the patient. Though he was the neurologist on call, Dr. N did not consider his discussion with Dr. ED as making him part of the patient’s “care team,” as he was not called in to see the patient and no stroke code was called prior to his call responsibilities ending at 7 p.m.

Under these circumstances, a motion for summary judgment seeking Dr. N’s dismissal from the suit would have had significant merit but for activity found in the patient’s electronic health records.

During the discovery phase of the litigation, the plaintiffs’ attorney deposed individuals at the hospital with the most knowledge of the patient’s medical records. That testimony identified Dr. N as logging in to the patient’s EHR not only around the time of his telephone call with Dr. ED, but then again before midnight that evening. Those logs suggested access to the MRI and to the clinical notes, which



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by that time documented the patient's continued deterioration.

Though Dr. ED testified that at the time of her discussion with Dr. N she considered him as part of the patient's care team, there was no evidence Dr. N took any further action or was involved with the patient – other than those EHR logs. With the plaintiff contending that excessive movement rendered the first MRI non-diagnostic, testimony pointing to Dr. N accessing the MRI would put him squarely in the middle of an argument that more should have been done for the patient that first evening.

Dr. N informally resolved the litigation with the plaintiffs, as did several other providers.

With EHR "metadata" able to show virtually every kind of activity involving a medical record, a physician accessing records while claiming no duty will be faced with a difficult question: If the individual is not a patient, what is the justification for reviewing that person's confidential medical chart?

And while the question of what constitutes a "curbside consult" may be forever debated, electronic proof of a physician's later review of the medical chart could very well knock the physician off the curb and into the traffic. ➦

*Gordon Ownby is CAP's General Counsel. Questions or comments related to "Case of the Month" should be directed to [gownby@CAPphysicians.com](mailto:gownby@CAPphysicians.com).*

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Employment Practices Liability Insurance (EPLI) policy administered through a carrier rated A+ (Superior) by A.M. Best. You can request a coverage limit of up to \$1 million for settlements or judgments from many common lawsuits brought by employees, former employees, job applicants, or other third parties.

**5. CAP Job Board.** If you are looking to add or replace a physician, nurse practitioner, or physician assistant in your practice, look no further than the CAP Job Board. This member-exclusive benefit enables you to post your available jobs for free – with free renewals – exposing

your openings to medical professionals seeking to join an outstanding practice in California. To post your open position, visit <https://jobs.capphysicians.com>.

For information about any of these exclusive CAP member programs and services, simply contact CAP Membership Services at 800-610-6642 or [ms@CAPphysicians.com](mailto:ms@CAPphysicians.com). Our helpful member support professionals are happy to answer any questions you have or refer you to the appropriate department. ➦



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*Legal guidance for individual matters should be obtained from a retained attorney.*