

Bills Defining Malpractice Go To Legislature

By CHARLES E. CHAPEL, Assemblyman, 46th District. This is my 13th year in the California State Legislature. Although I am not a lawyer, the duty of the legislators is to enact laws; hence, I have acquired some knowledge of law by listening to lawyers in committee hearings and in debates on the floor of the Assembly. One of the important things

I learned is that a vast amount of time, money and energy has been expended by the people of California in civil and criminal proceedings because the California codes do not contain any definition of malpractice, or any laws relating directly to malpractice.

THEREFORE, I asked the Legislative Counsel for the State of California, the Honorable A. C. Morrison, to prepare an official opinion and two laws which I have introduced regarding malpractice. The Legislative Counsel's official

opinion No. 9438, dated Feb. 18, 1963, signed by Ronald W. Tochterman, deputy legislative counsel, and approved by A. C. Morrison, Legislative Counsel, reads as follows:

"Dear Mr. Chapel: As you have requested, we have prepared two bills relating to malpractice. You also requested that we determine if there has been a judicial definition of 'malpractice' in California. We have found the following statements regarding the term in three California cases:

"... 'malpractice' has a

somewhat narrow meaning, namely the failure of the one charged with malpractice to exercise diligence, care and skill, such as ordinarily possessed by the members of his profession. Thus any physician may err or make a mistake without necessarily being guilty of malpractice."

"Malpractice is the neglect of a physician or a nurse to apply that degree of skill and learning in treating a patient which is customarily

applied in treating and caring for the sick or wounded similarly suffering in the same community. (See Webster's International, Oxford and Bouvier's dictionaries; C. J., Am. Jur.). While proof of it is customarily made by the testimony of experts (Rasmussen vs. Shickle, 4 Cal. App. 2d 426, 430 /41 P. 2d 184; Perkins vs. Trueblood, 180 Cal. 437, 433 /181 P. 642/), and while the law makes allowances for human weaknesses in the application and skill and learning (Rice vs. California Lutheran Hospital, 27 Cal. 2d 296 /163

P. 860, 862/), the facts of each case must be judged according to their own merits. (Valentin vs. La Societe Francaise (1946), 76 Cal. App. 2d 1, 5).

"Mere mistakes in the judgement of a physician do not constitute malpractice." (Scott vs. McPheeters (1939), 33 Cal. App. 2d 629, 637). "Very truly yours A. C. Morrison "Legislative Counsel"

MY ASSEMBLY Bill No. 1337, introduced Feb. 20, adds Article 8 (commencing with Section 690), Chapter 1, Divi-

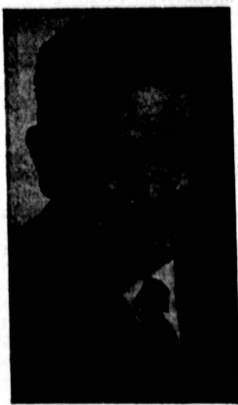
sion 2, Business and Professions Code. The bill provides that malpractice by a person licensed under provisions relating to the healing arts is a misdemeanor and it defines malpractice in accordance with court decisions quoted above in the opinion of the legislative counsel.

My Assembly Bill No. 1337, introduced Feb. 20, adds Section 1873 to the Code of Civil Procedure. It provides that when "malpractice" is a fact in dispute, it is established by proof of failure to exercise diligence, care and skill such as ordinarily possessed by members of the profession or business to which the person

charged with malpractice belongs.

IN PREVIOUS issues of this column, I have repeatedly said that the easiest and fastest way to get copies of bills is to write to the Legislative Bill Room, Room 215, State Capitol, Sacramento 14, Calif., and list the numbers and authors of the bills you want.

For example, if you want my malpractice bills, ask for Assembly Bill No. 1336 by Chapel and Assembly Bill No. 1337 by Chapel. Also enclose a stamped, self-addressed envelope. You can get two copies of each bill free of charge on request.



Mezin Named Officer of Local Agency

Robert S. Mezin has been named assistant vice president of the Gilbert C. Van Camp Insurance Agency.

He has been with the Van Camp Agency since November, 1960. A native son, he was born on Terminal Island and has always lived in San Pedro, except for four years' service with the Army Air Force during World War II.

Mezin handles the administration of several insurance welfare services in San Pedro and San Diego. He also specializes in providing insurance coverages for the fishing and allied industries.

He is a member of the San Pedro Elks Lodge. He attended San Pedro High School and the University of Southern California. He captained the baseball team at San Pedro High in 1941 and was on the All-City baseball team that same year.

Mezin and his wife, Mae, have two children, Robert Jr. and Linda Kay.

Wrong Digit Siren Slated To Be Muted

Ever dial a telephone number and find yourself "answered" by a siren?

If you have, it was because you dialed a non-existent number. The undulating tone told you that perhaps your finger dialed a "1" instead of a "2," or another combination that didn't register an assigned number.

Pacific Telephone has launched a program to make it easier on your ears if the no-such-number situation occurs again.

R. S. PYLE, the company's manager, said the siren's wail will be replaced by a pleasant, recorded announcement before the end of this year.

The recorded voice will say: "I'm sorry, we are unable to complete your call as dialed. Please check the number and dial again, or ask your operator for assistance. This is a recording."

According to the manager, many telephone users have become confused when greeted by the siren. "Some have considered reporting their phones out of order, when such was not the case," he pointed out.

MEANWHILE, Bell System companies across the nation have eliminated confusing letter and location codes which had no meaning to persons dialing long-distance calls, Pyle said.

For example, a person reaching a busy circuit on a long-distance call might have heard this message: "This is a recording from location N-352. I'm sorry, your call has been delayed by heavy traffic. Will you try again later, please?" "I work for the telephone company," the manager said. "And I wouldn't know that the operator meant by location N-352."

Today, a person reaching a busy circuit on a long-distance call may hear: "I'm sorry, all circuits are busy now. Will you try your call again later, please? This is a recording."

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