

SB2460

Measure Title:

RELATING TO CONTROLLED SUBSTANCES.

Report Title:

Controlled Substances

Description:

Prohibits pre-signed and predated prescriptions. Clarifies how the narcotic enforcement division administrator shall conduct inspections at pharmacies.

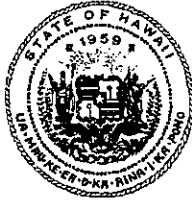
Introducer(s):

CHUN OAKLAND

Current Referral:

HTH, JDL

LINDA LINGLE
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**TESTIMONY ON SENATE BILL 2460
A BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES**

by

Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Health
Senator David Y. Ige, Chair
Senator Carol Fukunaga, Vice Chair

Wednesday, February 13, 2008, 1:15 p.m.
State Capitol, Room 016

Senator Ige, Senator Fukunaga, and Members of the Committee:

The Department of Public Safety strongly supports Senate Bill 2460 that if passed, would provide the division with the tools necessary to help prevent the improper prescribing of pharmaceutical controlled substances in the State.

Section 1 of Senate Bill 2460 would allow the Department to use an additional method to administratively correct minor infractions committed at pharmacies or by physicians. Section 1 of this bill would also afford the division the ability to work with the violator and prescribe the necessary action to correct the violation as well as specify a procedure for a registrant to contest the violation.

On page 2, lines 17 through 19, the Department is requesting that the proposed definition of "Bona fide practitioner-patient relationship" be amended to reflect the definition adopted by the Hawaii Board of Medical Examiners.

"Designated member of the physician's health care team" means a person authorized by the physician who is also authorized by State law to prescribe prescription drugs, shall include physician assistants, advanced practice registered nurses with prescriptive authority, and a covering physician.

This new definition would set minimum guidelines such as taking a medical history from the patient, listening to the patient's complaint and a requirement that the practitioner or a designated member of his health care team examine the patient prior to administering, prescribing or dispensing a controlled substance.

Sections 3 and 4 of Senate Bill 2460 would better clarify the requirements for an oral prescription issued to a pharmacy and the record keeping requirements for all controlled substance prescriptions.

The Department would request that no amendment be made to page 9, line 8, and that it be returned to the original statutory language to read as follows "pharmacy by facsimile; provided that:"

Section 4 of Senate Bill 2460 would clarify that it is a violation of State law to pre-sign blank prescriptions to facilitate the fraudulent obtaining of controlled substances and adds a penalty for a practitioner who administers, prescribes or dispenses a controlled substance without a medical reason determined after a good faith prior examination of the patient. This new violation is necessary to deter and address the violation of a practitioner who is acting as a drug dealer and administering, prescribing or dispensing controlled substances over the internet or without a medical reason as determined after a physical or psychological examination by the practitioner or his

health care team. Across the nation, law enforcement is attempting to deal with another type of drug dealer: the unscrupulous practitioner who conducts internet, telephonic, mail or just does not conduct any type of examination with the patient prior to prescribing large amounts of controlled substances, many of which end up sold on the street.

The Department is requesting that on page 15, lines 12 through 17, be amended to read as follow:

"[(b)] (c) Any person who violates this section is guilty of a class C felony."

The Department feels that by adding the enhanced penalty utilizing Section 712 part IV it may make prosecution of this offence more difficult. The Department is therefore requesting that it be left a Class C Felony to be consistent with other penalties designated in this chapter.

Section 5 of Senate Bill 2460 proposes to add the offence knowingly or intentionally administering or prescribing a controlled substance with a fictitious, revoked, suspended or expired or certificate issued to another person. This new violation is necessary to address an individual that knowingly or intentionally utilizes a controlled substance certificate of another practitioner.

Section 6 of Senate Bill 2460 amends Section 329-52 relating to Administrative Inspections and Warrants of controlled substance registrants. The new language being proposed is similar to that used by State Food and Drug inspectors and would better allow the Department to safeguard the public. Section 6 also deletes the language relating to administrative inspection warrants due to the fact that the Department utilizes

Senate Bill 2460
February 13, 2008
Page 4

search warrants for the seizure of records and property and has not utilized administrative inspection warrants for well over fifteen years.

In summary the Department of Public Safety strongly supports passage of Senate Bill 2460.

Thank you for the opportunity to testify on this matter.

Testimony of
Phyllis Dendle
Director of Government Affairs

Senate Committee on Health
The Honorable David Y. Ige, Chair
The Honorable Carol Fukunaga, Vice Chair

February 13, 2008
1:15 PM
Conference Room 016

SB 2460 RELATING TO CONTROLLED SUBSTANCES

Chair Ige and committee members, thank you for this opportunity to provide testimony on SB2460 making amendments to Chapter 329 regarding the dispensing of pharmaceuticals.

Kaiser Permanente supports this bill.

The amendments in this bill are the product of the cooperative effort of pharmacists who work in both health care and commercial settings and state agencies involved in regulating the dispensing of pharmaceuticals and the actions of pharmacists. They affect several sections of 329 HRS.

The amendments clarify what is a physician-patient relationship and how an oral or fax prescription is documented. The bill also describes required behavior of practitioners who prescribe by prohibiting predated or presigned prescriptions and requiring a physician-patient relationship for prescribing controlled substances. It also amends the section of the law describing how the narcotics enforcement division conducts inspections of pharmacies and what the penalties are for violating this chapter.

These amendments provide better protection for Hawaii residents while supporting the efficiency of pharmacies and the work of the narcotics enforcement division,

We urge you to pass this bill and thank you for your consideration.



Testimony of
Jerry Smead, RPh and Barbara Kashiwabara, RPh, Pharm.D.
Co-Chairs, Government Affairs Committee

Before:
Senate Committee on Health
The Honorable David Y. Ige, Chair
The Honorable Carol Fukunaga, Vice Chair

February 13, 2008
1:15pm
Conference Room 016

SB 2460 Relating to Controlled Substances

Chair Ige, Vice Chair Fukunaga and Committee members. Mahalo for this opportunity to provide testimony on SB 2460 which amends Chapter 329, Hawaii Revised Statutes to provide clarity with regards to the dispensing of controlled medications.

The Hawaii Pharmacists Association supports this bill, as it reflects the collaborative work done in 2007 by the Association, the Board of Pharmacy, the Department of Health Food & Drug Branch, the Narcotics Enforcement Division, as well as various pharmacies and health care organizations.

In particular, the following amendments will provide clarity to pharmacists and pharmacies when evaluating prescriptions for controlled medications and ease current operational burdens, prior to dispensing these drugs to patients.

1. Defining the physician-patient relationship, including designating members of the physician's health care team as part of that care relationship. Patients who have a legitimate relationship with their physician and health care team are more likely to use their controlled medications as prescribed for relief of pain, and less likely to abuse them.
2. Simplifying the required elements of an oral prescription for controlled medications. Currently, oral prescriptions must meet the same elements as a written prescription despite there being no risk for fraud.
3. Clarifying where the original controlled substance prescription is maintained when transmitted by the practitioner to a pharmacy by facsimile under specific situations (original maintained by the practitioner). Currently, it is not clear where the original prescription is maintained.

4. Clarifies that prescriptions for controlled medications cannot be pre-dated or pre-signed. Currently, it is not clear whether this is allowed.
5. Clarifies that the practitioner be physically present in the state when prescribing controlled medications. Currently, it is not clear whether this is allowed.

HPhA also supports routine inspections of licensed pharmacies by the Narcotics Enforcement Division for assessment of compliance to HRS §329, with the expectation that the NED will work collaboratively with pharmacists and pharmacies to take appropriate corrective action(s) to ensure the safety of patients and the accountability of controlled medications within the pharmacy. This inspection process should be educational and informative, not punitive, unless non-compliance to this chapter is malicious in nature.

These amendments provide better protection for Hawaii residents while supporting the efficient operation of pharmacies and the law enforcement work of the Narcotics Enforcement Division.

We ask you to pass this bill and thank you for this opportunity to testify on SB 2460.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2460, RELATING TO CONTROLLED SUBSTANCES.

L A T E

BEFORE THE:

SENATE COMMITTEE ON HEALTH

DATE: Wednesday, February 13, 2008 **TIME:** 1:15 PM

LOCATION: State Capitol, Room 016
Deliver to: Committee Clerk, Room 215, 1 copies

TESTIFIER(S): WRITTEN TESTIMONY ONLY.
(For more information, please call Mark K. Miyahira,
Deputy Attorney General, at 586-1160.)

Chair Ige and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of this bill is to prohibit a practitioner, as defined in section 329-1, Hawaii Revised Statutes, from pre-dating or pre-signing prescriptions to facilitate the obtaining or attempted obtaining of controlled substances, and from facilitating the issuance or distribution of a written prescription or issuance of an oral prescription for a controlled substance when the practitioner is not physically in the state. The bill will also prohibit a person, subject to part III of chapter 329, Hawaii Revised Statutes, from administering, prescribing, or knowingly dispensing any controlled substance without a bona fide physician-patient relationship. This bill will also clarify how the Narcotics Enforcement Division Administrator and agents shall conduct inspections at pharmacies.

This bill will provide for better control and management of prescriptions. It should reduce the number of incidents of fraudulently obtained controlled substances. And it will also address the problem of physicians inappropriately issuing prescriptions.

On June 14, 2007, a federal grand jury indicted a Kauai physician with 20 counts of unlawfully distributing prescription drugs. The physician's "Dial-a-doc" service prescribed medication to people he

interviewed over the phone. The indictment charged the physician with unlawfully distributing the painkillers oxycodone, OxyContin, and methadone to five different people. This bill will address this type of problem by prohibiting a person, subject to part III of chapter 329, from administering, prescribing, or knowingly dispensing any controlled substance without a bona fide physician-patient relationship, the definition of which will be amended to require, at a minimum, a personal face-to-face history and physical examination of a patient.

The Department respectfully requests that the bill be passed.