

LINDA LINGLE
GOVERNOR OF HAWAII,



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

HOUSE COMMITTEE ON FINANCE

**HB 1379, HD 1, RELATING TO PHYSICIAN ORDERS FOR LIFE SUSTAINING
TREATMENT**

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

**February 27, 2009
4:00 PM**

1 **Department's Position:** The Department of Health will support HB 1379, HD 1 with the content and
2 technical amendments being offered by Kokua Mau and Hospice Hawaii. We do not support this
3 measure as currently written.

4 **Fiscal Implications:** None.

5 **Purpose and Justification:** The Department is part of the stakeholder group (Kokua Mau, Hospice
6 Hawaii, Healthcare Association of Hawaii, City and County of Honolulu Department of Emergency
7 Services and local physicians) working to reach agreement on this proposal.

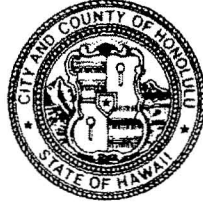
8 With the amendments being offered by Mr. Ken Zeri, President of Kokua Mau and of Hospice
9 Hawaii, the Department's concerns expressed in previous testimony have been addressed.

10 We respectfully urge the committee to adopt these proposed amendments to this measure.

11 Thank you for the opportunity to submit testimony.

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

ELIZABETH A. CHAR, M.D.
DIRECTOR

February 25, 2009

The Honorable Marcus R. Oshiro, Chair
and Members
The Honorable Marilyn B. Lee, Vice, Vice Chair
and Members
Committee on Finance
The Senate
Twenty-Fifth Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: HB1379 HD1, Relating to Physician Orders for Life Sustaining Treatment

Dear Chair Oshiro, Vice Chair Lee and Committee Members:

HB 1379 HD 1 seeks to clarify and amend HB 3126, which was passed in 2006. The Honolulu Emergency Services Department, City and County of Honolulu, is in favor of this bill as it will allow people to make their wishes known and die a natural death with measures to ensure comfort care if they so choose.

Currently, Emergency Medical Services (EMS) personnel are mandated to attempt resuscitation unless the person has a state issued comfort care only, do not attempt resuscitation (CCO-DNAR) bracelet or necklace. The difficulty with this is that in order for the person to obtain one of these bracelets, the person must have a terminal condition and apply through the State Department of Health, via the State EMS office, with a form filled out by their physician. POLST will be a form that can be obtained in a multitude of locations or even via the internet and the form can be signed after a discussion with one's physician.

Many members in our community mistakenly think that having a living will is enough to prevent an unwanted attempt at resuscitation by emergency responders. POSLT will help to ensure that if the person prefers to die a natural death, comfort care can be given by EMS personnel and that person's wishes can be respected.

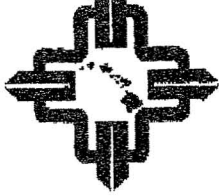
In order to ensure survival of this bill, we need to delete Page 7, sections 3 and 4 that mandate that all facilities and hospitals use this form. It is unrealistic and will lead to the demise of the bill.

Thank you for the opportunity to testify on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth A. Char".

Elizabeth A. Char, M.D., Director
Honolulu Emergency Services Department



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Friday, February 27, 2009
4:00 PM
Conference Room 308
Hawaii State Capitol

Written Comments on HB 1379HD1 Relating to Physician Orders for Life Sustaining Treatment

Creates a process for a patient to direct end-of-life treatment in a standardized physician orders for life sustaining form.

Thomas M. Driskill, Jr.
President and Chief Executive Officer
Hawaii Health Systems Corporation (HHSC)

On behalf of the Hawaii Health Systems Corporation (HHSC) Board of Directors, thank you for this opportunity to testify on HB1379 HD1.

HB1379 HD1 would create a process for a patient to direct end-of-life treatment in a standardized physician orders for life sustaining form, would require the department of health to design the form, and would require the department of health and Hawaii health systems corporation to require adoption of the form in their respective health facilities.

We appreciate the intent of this bill to facilitate end-of-life treatment but are concerned this would be an inappropriate intrusion by management and government into medical staff affairs. Respectfully, therefore, we ask that this bill be held.

Thank you for allowing us the opportunity to testify on this matter.

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www.hhsc.org <<http://www.hhsc.org>>



HOUSE COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair

Conference Room 308
February 27, 2009 at 4:00 p.m.

Testimony in support of HB 1379 HD 1 with amendments.

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers. Thank you for this opportunity to testify on HB 1379 HD 1, which creates a Physicians Orders for Life Sustaining Treatments (POLST) that describes an individual's wishes regarding end-of-life treatment. The Healthcare Association supports the bill with amendments.

In recent years various types of advance health care directives have been developed so that individuals can make known to health care providers the kind of medical care they desire. For example, many people now have a living will that describes what kind of medical care they want at the end of their lives.

In 2006 a bill was sponsored by advocates who intended to establish a POLST system. The bill was enacted, but a subsequent legal review of the bill limited its authority to the creation of a "comfort care only – do not resuscitate" (CCO-DNR) document.

A CCO-DNR document is simply a "yes or no" answer to the question of whether resuscitation should be initiated by a health care provider if a person is found to be without a pulse or breathing. A POLST document is much more detailed, distilling orders of a person's advance directives and representing a discussion between the patient and the patient's physician. As such, the POLST document typically goes far beyond the question of whether or not to resuscitate if there is no pulse or breath.

HB 1379 was developed after consultation with the National POLST Workgroup and representatives of Hawaii's Department of Health and is based on the California POLST law. After the bill was introduced, however, not all stakeholders initially agreed with it.

Interested parties have recently been working with each other to develop amendments to the bill to make it acceptable to all stakeholders. They have agreed to an amendment to remove the mandates contained in the bill, and other amendments are being developed. Ken Zeri will present testimony that includes the proposed amendments.

With these amendments, the Healthcare Association supports HB 1379 HD 1.

To: **Representative Marcus Oshiro, Chair**
Representative Marilyn Lee, Vice-Chair
House Committee on Finance

From: Daniel Fischberg, MD, PhD

Subject: **Support of HB 1379, Relating to Physicians Orders for Life Sustaining Treatments**

My name is Daniel Fischberg, and I am a physician specializing in pain management and palliative care. In this capacity I care for hundreds of terminally ill patients each year, mostly in the acute hospital setting. **I am testifying in strong support of HB 1379, Relating to Physicians Orders for Life Sustaining Treatments**, which would replace an ineffective "comfort care only" bracelet system with a standard document that clearly states the wishes of the person cared for by emergency medical personnel, first responders and health care providers throughout the state.

I respect that the committee members likely already recognize the shortcomings of the current Comfort Care Only/Do Not Resuscitate bracelet: after all, legislation to improve this system with a rapid communication document was passed and signed into law two years ago. The current measure is designed to correct inconsistencies found in the prior legislation and to bring our practice into compliance with the standard approved by the National POLST Workgroup.

While an advance directive can be a useful tool to summarize a person's values, beliefs and preferences for possible changes in future health, a POLST document provides real-time instructions for first-responders, emergency room personnel and other health care providers. Unlike a living will these instructions are clear and actionable not requiring an evaluation of whether certain terms have been met. From daily experience, I can assure you that interpreting a living will is not always a straight-forward affair, often requiring the interpretation of an Ethics Committee. First line responders require absolute clarity so that they can immediately act to resuscitate or initiate comfort measures. National data show that POLST documents provide this kind of clarity.

Another major advantage of POLST over the current bracelet system is that the latter only allows for a binary decision: resuscitate or don't resuscitate. POLST documents allow for finer shades of gray. Patients can designate comfort measures only, full aggressive measures, or choose which interventions they would accept and which they would refuse. POLST documents even allow patients to request a trial of certain treatments, such as tube feedings, to see if meaningful improvements in health might occur and instructions to stop these treatments if and when these improvements do not occur. I assure you that these choices are very clinically meaningful and clarifying these choices respects the patient's autonomy to a much greater extent than current

practice permits.

I urge the committee to pass HB 1379. The current bracelet system has been proven to be ineffective in honoring people's wishes, and it needs to be replaced. A uniform document written as physician's orders will clearly articulate a person's choices and allow healthcare providers across the medical spectrum—from EMS to ERs to ICUs to nursing homes—to quickly and unambiguously honor these choices and improve the delivery of healthcare in Hawai'i.

Thank you for this opportunity to testify and for your serious and thoughtful consideration of this bill and submitted testimony. Please do not hesitate to contact me for additional information or questions.

Sincerely,

Daniel Fischberg, MD, PhD

February 27, 2009

To: HOUSE COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair and
Members

From: Kenneth Zeri, RN, MS
President Kokua Mau
President, Hospice Hawaii

**Testimony in support of HB 1379 HD1 relating to
Physicians Orders for Life Sustaining Treatment**

Please accept my testimony in support of HB 1379 HD1 related to Physicians Orders for Life Sustaining Treatments (POLST), with proposed content and technical amendments.

In 2006, the legislature signed into law the act authorizing the creation of a rapid identification document, replacing the comfort care only – do not resuscitate bracelet system. However, the implementation of the document system was “hung up” because a lack of the physician’s signature. Further, while the intent was to allow the DOH to establish a POLST document, the interpretation was that it could only be a CCO-DNR document, thus eliminating the applicability of the other critical components of a POLST Document.

After consultation with the National POLST Workgroup, and representatives of the DOH, we seek to correct the problems with a revision to the statutes. We have worked with Senator Baker’s and Representative Lee’s office to propose this legislation, based upon the California POLST laws.

Additionally, the interested stakeholders, (the Department of Health, The Healthcare Association, City and County EMS, and local physicians) have worked with Kokua Mau to develop a consensus proposal. We have consulted further with the National POLST Work Group and determined that mandated acceptance of the POLST form by hospitals has not been required in order to achieve the desired outcome. Dr. Woody Moss, from West Virginia reports that without mandates, 85% of facilities honor the POLST. Other communities report acknowledgement and use of the form without mandates (Oregon and Wisconsin). Those patients have their wishes honored by the local Emergency Medical Services (EMS) during transport to facilities. In our community, removing the mandate will still allow an emergency room team to review the POLST form with the family and develop a treatment plan reflective and respective of those orders indicated on a POLST. Therefore, we would propose to eliminate Section 3 of HD1.

We would like to ask the committee to consider the following technical changes:

Page 2 Line 8: delete "adopted,"

Page 2 Line 14: replace "implement" with "allow for"

Page 3 Line 6: after "...treatment form." add the words "adopted by the Department."

Page 3: Definitions: After "Form" add in the definition for:

"Health-care Provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(This was taken from HRS 327E, the Uniform Health Care Decisions, Modified, bill)

Page 3: Definitions: After "Physician orders for life sustaining treatment form":

"Patient's Physician" means a physician licensed in the state of Hawaii who has examined the patient.

Page 4: Line 11: Strike "and the patient's treating physician, if not the same"

Page 4, Line 18: Strike "treating physician,"

Page 5, Line 4: Strike "and treating physician, if not the same," and add "EMS and emergency physicians"

Page 6, Line 20: Strike "shall" and replace with "may"

Page 7, Lines 1 through 21 and Page 8, lines 1 & 2: Strike completely.

Page 7 Line 4: make the Act take effect upon approval.

Differentiation between CCO-DNR Bracelet/ Document, Advance Directives and POLST

For the lay person who is not engaged in hospice or palliative care on a daily basis, nor is an attorney specializing in estate planning, the three terms can seem blurred.

- CCO-DNR Bracelet/ Document. This is simply a "yes or no" answer to the question: If this person is found to be without a pulse or breathing, should CPR (resuscitation) be initiated? The document or bracelet offers no areas of grey, nor does it guide the Emergency Medical System, Emergency Room staff or Hospital ICU physicians in the critical areas of the care before the heart stops.
- Advance Directives: This document can represent the in-depth discussion of how an individual wishes to be treated in the face of chronic or life threatening diseases. It addresses a wide range of topics, from resuscitation to artificial feeding and hydration. From how the person wants their pain to be treated, to the use of hospice or the support of clergy. It is a guideline designed to assist families and healthcare providers in making decisions. However, it has no force of a physician's orders and cannot be used by EMS to make interpretive decisions during an emergency call. Further, each institution still needs to develop a set of internal orders, and those orders for care stop once the patient leaves the facility or is transferred to another.

- POLST: These orders for care are a distillation of the Advance Directives and represent a discussion with the patient or their surrogate decision maker and the physician. The physician, based upon advance directives, completes this standardized form, addressing the issues such as
 - Attempting resuscitation if no pulse or breath
 - Medical interventions if there is a pulse and breathing
 - The use of antibiotics
 - Artificially administered nutrition

The POLST form can be rapidly scanned by EMS personnel as they arrive on scene and communicated to the receiving Emergency Room. Further, they provide a solid starting point for the Emergency Room Physician to initiate the discussion with the family to set the immediate treatment plan.

Thank you for the opportunity to testify and I may be reached at Hospice Hawai'i 924-9255 for further questions.

TO : COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice chair

FROM: Eldon L. Wegner, Ph.D.
Policy Advisory Board for Elder Affairs (PABEA)

SUBJECT: HB1379 HD1, Relating to Physician Orders for life Sustaining Treatment

HEARING: Friday, February 27, 2009, 4 pm,
Conference Room 308, Hawaii State Capitol

PURPOSE: Creates a process for a patient to direct end-of-life treatment in a standardized physician orders for life sustaining form.

POSITION: PABEA supports HB1379 HD1.

RATIONALE:

The Policy Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on behalf of the Executive Office of Aging.

Advances in medical technology have resulted in procedures which can prolong life but sometimes carry severe compromises in quality of life. We believe that it is important that patients be given control over end-of-life treatment decisions. The current provision of Health Care Directives is one measure which enables patients to express their desires. However, this bill proposes supplementing Health Care Directives with physician orders which would give patients even more control over their actual treatment.

Thank you for allowing me to testify.