



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

In reply, please refer to:
File:

HOUSE COMMITTEE ON JUDICIARY

HB1379, RELATING TO PHYSICIAN ORDERS FOR LIFE SUSTAINING TREATMENT

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

**February 12, 2009
2:05 p.m.**

1 **Department's Position:** The department appreciates the intent of this bill, but must respectfully oppose
2 it as currently drafted.

3 **Fiscal Implications:** The department's RN nurse surveyor teams would be required to verify
4 compliance with this additional requirement, which will add time to each survey at each facility. The
5 costs to the state DOH cannot be quantified.

6 **Purpose and Justification:** The bill seeks to use a standardized form to transform a person's advance
7 directive into a medical order that would be accepted among all health care settings. However, hospitals
8 and other health care facilities recognize physician orders only from physicians that have privileges at
9 their facility. Therefore, a standardized form signed by a physician would not necessarily be honored
10 from one facility to the next and could not be enforced. Moreover, state statute and administrative rules
11 are already in place to address end-of-life needs. Hospitals are required to have a written policy
12 concerning the rights and responsibilities of patients. These include a patient's right to refuse treatment
13 after being informed of the medical consequences of that refusal, for the patient to be treated with
14 consideration, respect, full recognition of dignity and individuality, and to require only the provision of

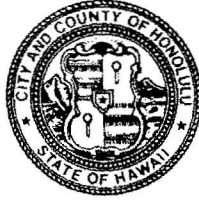
1 comfort care by emergency medical services personnel, first responders or any other health care
2 provider. The Joint Commission also requires hospitals to address the wishes of the patient relating to
3 end-of-life decisions.

4 In summary, this bill appears to duplicate current requirements and would add costs for the
5 department. A new program and costs cannot be added at the same time that established programs are
6 being cut and other funding cuts may be required.

7 Thank you for the opportunity to testify.

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869
Phone: (808) 723-7800 • Fax: (808) 833-3934



MUFI HANNEMANN
MAYOR

ELIZABETH A. CHAR, M.D.
DIRECTOR

February 11, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members
The Honorable Ken Ito, Vice Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: HB 1379, Relating to Physician Orders for Life Sustaining Treatment

Dear Chair Karamatsu, Vice Chair Ito and Committee Members:

HB 1379 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.

Thank you for the opportunity to testify on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "E.A. Char", is written above the typed name.

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

A JOINT LEGISLATIVE EFFORT

E-Mail: JUDtestimony@Capitol.hawaii.gov
Regarding: House JUD Committee
Hearing on: February 12, 2009 @ 2:05 p.m. in room #325
Copies Necessary: 5 copies

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Date: February 11, 2009

To: House Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

From: Dennis Arakaki
Executive Director
Hawaii Family Forum / Hawaii Catholic Conference

Re: **Support for HB 1379 Relating to Physician Orders for Life Sustaining Treatment**

Honorable Chair and members of the House Committee on Judiciary, I am Dennis Arakaki, representing both the Hawaii Family Forum and the Roman Catholic Church in the State of Hawaii.

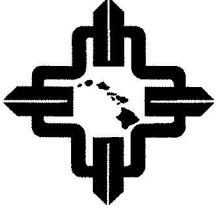
Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. The Roman Catholic Church in Hawaii, under the leadership of Bishop Larry Silva, represents over 220,000 Catholics in Hawaii.

We support Hawaii law which allows individuals to name an agent to make health care decisions for them if they lose the capacity to make or express their own choices. For Christians, health care decisions are made in the light of our faith and based on our respect for the sanctity and dignity of life.

Passage of HB 1379 would allow the use of a standardized form that states an individual's wishes regarding end-of-life treatment in all pre-hospital and health care settings. This would allow each person the opportunity to be very specific about the course of medical attention they desire if they become incapacitated.

Advance directives ensure that the decisions regarding the medical care we receive are made in accord with our religious beliefs. We support the use of a form to expedite this process in a meaningful way.

We ask that you pass HB 1379. Mahalo for the opportunity to testify.



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

"Touching Lives Every Day"

**The House of Representatives
Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair**

Thursday, February 12, 2009
2:05 PM
Conference Room 325
Hawaii State Capitol

HB 1379 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. Requires department of health to design the form. Requires department of health and Hawaii health systems corporation to require adoption of the form in their respective health facilities.

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

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporation Board of Directors, thank you for this opportunity to testify on HB 1379.

HB 1379 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 in committee.

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

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

February 11, 2009

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
And Members
House Committee on Judiciary

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

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

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

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

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 9: Strike “and the patient’s treating physician,”

Page 4, Line 16: Strike “treating physician,”

Page 4, Line 21: Strike “treating physician,”

Page 5, Line 4: Strike “and treating physician, if not the same,”

Page 5, Line 12: consider replacing “physician, health care professional, nurses aide” with “Health-care Provider” as defined above

Page 5, Line 13: is it appropriate to replace this long list of facilities, etc, with the simple definition of a healthcare facility as defined in 323D-2?

Likewise, Page 7, line 3 & 4 only list healthcare facilities and hospitals. Is it appropriate to address this from the definition of 323D-2?

The intent is that the patient be able to have their own POLST orders carried out in any facility in Hawaii in which they receive care.

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.

Testimony for HB1379

Camille Rockett, Masters of Social Work Student, UH Manoa

Before the House Judiciary Committee

Thursday, February 12, 2009

I am writing to OPPOSE the passage of HB1379 which mandates physician order forms for life sustaining treatment.

I am a Master's student in the School of Social Work at UH Manoa, and I'm currently interning at Wahiawa General Hospital.

While I agree with the intentions of HB1379, that people should make their end of life treatment decisions clear so that their wishes can be carried out, there already exists the advanced directive form to protect these rights. The advance directive form designates power of attorney for patients who might not be capable of making medical decisions, and it also indicates what kind of medical treatment patients will want if they are in their last days. There are specific interventions a patient can request already, like nutrition and hydration, pain medication, or none.

The life sustaining treatment order form would be completely irrelevant, as patients and doctors cannot anticipate the medical treatment that might or might not be needed. Also, even if the patient wishes to deny aggressive treatment or life sustaining intervention in their advance directives, their power of attorney can tell the doctors to ignore the directive and aggressively treat the patient. Doctors will most often then ignore the directive and will follow the wishes of the power of attorney, for their own legal protection. Power of attorney is more likely to hold up in court should the family sue the doctor.

So even if this life sustaining order is in place in addition to the advance directive, it would be overridden by the power of attorney if they so choose. Lastly, most patients elect to forego aggressive life sustaining treatment, wishing not to suffer or spend more time in a vegetative state, and this is specified in the advance directive form already. Not only will the life sustaining treatment orders create more confusing paperwork for patients, but it will make treatment decisions more complicated for doctors who receive these orders which were not written with knowledge of a patient's current condition.

What would actually help both doctors and patients is the creating of a standardized electronic form which can be sent between hospitals that patients fill out. This form should be as specific as possible about the patients' wishes regarding life sustaining treatment. It would be costly mistake to mandate that doctors create an irrelevant document when they already have difficulty holding to advance directives.

Please do not pass this bill.

**To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, MD, Vice-Chair
House Committee on Judiciary**

From: Daniel Fischberg, MD, PhD

Date & Time of Hearing: 2:05 pm, Thursday, February 12, 2009

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.

12

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