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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
JUDICIARY AND GOVERNMENT OPERATIONS

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

THURSDAY, FEBRUARY 26, 2009
9:00 A.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 449 S.D.1
RELATING TO PATIENT PRESCRIPTION INFORMATION

TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
AND TO THE HONORABLE DWIGHT Y. TAKAMINE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to submit written comments on Senate Bill No. 449 S.D.1, Relating to Patient Prescription Information. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes Senate Bill No. 449 S.D.1.

Senate Bill No. 449 S.D.1 prohibits the licensing, transfer, use, or sale of patients' prescription information by any pharmacy benefits manager, insurance

company, electronic transmission intermediary, licensed pharmacy, licensed physician or osteopath, or other similar entity for any commercial purposes and provides for limited exceptions. The bill requires RICO to initiate investigations and disciplinary action to enforce the prohibition and to refer reports of violations to the professional licensing agency for investigation and disciplinary action. Finally, the bill provides that a violation constitutes an unfair or deceptive act under §480-2, Hawaii Revised Statutes ("HRS").

The Department opposes Senate Bill No. 449 S.D.1 for the following reasons:

1) Senate Bill No. 449 S.D.1 is modeled after a New Hampshire statute. As referenced on page 1 of the bill, the statute's validity was upheld in the United States First Circuit Court of Appeals. However, it appears that the court ruling will be appealed to the United States Supreme Court (Application for stay pending filing and disposition of petition for writ of certiorari filed February 4 and denied February 6 at U.S. Supreme Court). The Department respectfully suggests that legislation be postponed at least until the outcome of the appeal is determined. Should the legislation be enacted at this time, it will likely be challenged in court.

2) Senate Bill No. 449 S.D.1 assigns enforcement for violations of the bill's provisions to RICO. The Department believes that assignment is inappropriate. RICO's jurisdiction and enforcement authority is limited to violations of licensing laws. The new section created by Senate Bill No. 449 S.D.1 is not a licensing law. As such, if RICO were to receive a complaint, it would investigate

complaints involving licensees, such as physicians and pharmacies, refer insurance-related complaints to the Insurance Division, and refer all other complaints to other agencies. This would result in a variety of outcomes and fines, depending upon who the violator is.

Thank you for the opportunity to submit written comments in opposition to Senate Bill No. 449 S.D.1. I will be happy to answer any questions the members of the Committee may have.

February 25, 2009

TO: Chair Brian T. Taniguchi and Members of the Committee on Judiciary and Government Operations

FROM: Pharmaceutical Research and Manufacturers of America (William L. Goo/Norman H. Suzuki)

RE: **SB 449, SD1** - Relating to Patient Prescription Information

Hearing Date: Thursday, February 26, 2009 at 9:00 a.m.

We represent Pharmaceutical Research and Manufacturers of America (PhRMA).

PhRMA respectfully opposes passage of **SB 449, SD1** for the reasons set forth below.

1. Prescriber information is needed to allow prescription drug manufacturers to **carry out** federally mandated drug programs and **notify** physicians and their patients about warnings or drug recalls.

2. The intent of this bill which is to keep drug costs down may have the opposite effect in that it would require pharmaceutical companies to expend **more time and money** to obtain the information they need through alternative means which would ultimately result in that cost being passed on to consumers.

3. There are already adequate procedures and measures in place under both **federal** (HIPAA) and **state** (HRS §328-16) law to protect against the unauthorized disclosure of patient information.

4. The Food and Drug Administration (FDA) imposes **strict limitations** on the promotional information that pharmaceutical company representatives may give to health care providers to explain a particular drug and how it works.

5. The American Medical Association (AMA) already has in place an **opt-out** procedure whereby physicians can elect not to release prescriber-identifiable data to pharmaceutical representatives. Notwithstanding the availability of this procedure, most physicians have not chosen to exercise this right or do not deem the conduct of pharmaceutical representatives to be invasive or burdensome.

6. PhRMA has implemented a **code** for its members on how to interact with healthcare professionals. The code was designed to provide guidelines for marketing products to healthcare professionals addressing such issues as the providing of gifts and courtesies. The code strongly encourages its members to follow its directives and specifically states that gifts of substantial value and which provide a personal benefit are not permitted.

It is respectfully requested that the Committee hold this measure.

If the Committee has any questions, they may contact William L. Goo at 284-2389 or wgoo@lava.net. Thank you for considering these comments.

Thursday, February 26, 2009, 9:00 a.m. CR 016

To: COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

Re: SB 449 RELATING TO PATIENT PRESCRIPTION INFORMATION.

Chairs & Committee Members:

Hawaii Medical Association would like to provide comments on this measure.

We support the intent to restrict the commercial use of prescription information to protect patient privacy and limit pharmaceutical companies' influence on physician prescription patterns. However, this bill may be superfluous because the American Medical Association has a program that addresses this issue, The AMA Physician Data Restriction Program (PDRP).

The AMA conducted a Gallup survey of physician attitudes regarding the use of physician prescribing data by pharmaceutical companies. The survey found that the majority (84%) of physicians said either they were not concerned about the release of prescribing data or that the ability to "opt-out" of the release of their data to pharmaceutical sales representatives would alleviate their concerns. In response to these findings, the AMA created the PDRP.

PDRP gives physicians the option to withhold their prescribing data from pharmaceutical sales representatives while still making it available for medical research purposes. Physicians can register online, by phone or by fax. The restriction is permanent unless reversed by the physician. The PDRP is offered and promoted to all physicians, both AMA members and non-members.

Through licensing agreements with health care information organizations (HIOs) that collect and compile physician prescribing data and sell it to pharmaceutical companies, the AMA can exert influence over how the HIOs and their pharmaceutical clients use prescribing data. These licensing contracts require the pharmaceutical companies to honor PDRP physician opt-outs.

More information is available at www.ama-assn.org/go/prescribingdata.

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HAWAII INSURERS COUNCIL
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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Thursday, February 26, 2009
9:00 a.m.

SB 449, SD1

Chair Taniguchi, Vice Chair Takamine and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **supports** S.B. 449, SD1 **with clarifying amendments**. We offer amended language to section 328 - ____(a) (4) so that utilization review can also be done by a third party insurance provider. For example, in the case of a tort claim resulting from a motor vehicle insurance accident, the bodily injury insurer would be the third party insurance provider and medical records including prescription information may be requested.

"Section 328-_____ (a)(4) Utilization review by a health care provider, the patient's insurance provider, ***third party insurance provider,*** or the agent of either;"

We also request that the words, "or evaluate" be deleted from Page 3, line 15 of the bill because insurers would like to be able to evaluate prescription information in the event certain patterns are revealed, for instance, consistent overprescribing of pain medication.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 4:26 PM
To: JGO Testimony
Cc: tom.cantor@scantibodies.com
Subject: Testimony for SB449 on 2/26/2009 9:00:00 AM
Attachments: TCantorHISB449.doc

Testimony for JGO 2/26/2009 9:00:00 AM SB449

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Tom Cantor
Organization: Individual
Address: 9336 Abraham Way Santee, CA
Phone: 619 258 9300
E-mail: tom.cantor@scantibodies.com
Submitted on: 2/25/2009

Comments:

Chairman Taniguchi, Vice Chairman Takamine, and members of the Judiciary and Government Operations Committee, my name is Tom Cantor, and I am honored to have the opportunity to submit testimony concerning the use, transfer, licensing, or sale of a patient's prescription information for any commercial purpose.

As an insider to the healthcare industry with a staff of former pharmaceutical reps, and extensive contact with pharmaceutical companies, physicians and the industry as a whole, I am privy to just how corrupt the selling of physician prescription data can be. A most perverse example is one of our pharmaceutical reps reporting that he was trained by a large company to "make the patient sick and then sell them a cure."

Pharmaceutical reps' compensation is based on how the physicians in their region prescribe for their product. Physicians are too busy to read scientific articles and have not been taught the skills with which to evaluate those articles. Reps are trained to use professional articles that emphasize the importance of prescribing their drugs. Prescription information provides the target plan for the reps to know who they must focus on to increase the sales in their territory, increasing their bonuses.

Please remove patient prescribing data from the sellers' toolboxes. Short-circuit this path to influence so that doctors are not subject to the temptation of sales rep provided office lunches, prejudiced application of scientific articles, invitations to expensive restaurants and trips, pharma logo-ed office supplies and other gifts. These are all weapons the pharmaceutical reps use to attack the low-prescribing docs who are identified through patient info. In the interest of protecting patients from influences over their care, you must prohibit this information being sold.

Thank you.

Tom Cantor
President, Scantibodies Laboratory, Inc.
www.scantibodies.com and www.scltesting.com