



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

In reply, please refer to:  
File:

**SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**  
**SB0516, SD 1, RELATING TO PHYSICIAN ORDERS FOR LIFE SUSTAINING**  
**TREATMENT**

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

**March 2, 2009**  
**10:30 AM**

1 **Department's Position:** The Department of Health will support SB0516, SD 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.



SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS  
Senator Brian Taniguchi, Chair

Conference Room 016  
March 2, 2009 at 10:30 a.m.

**Expressing support of SB 516 SD 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 comment on SB 516 SD 1, which creates a Physicians Orders for Life Sustaining Treatments (POLST) that describes an individual's wishes regarding end-of-life care. 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.

SB 516 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 SB 516 SD 1.

March 1, 2009

To: SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS  
Senator Brian Taniguchi, Chair  
Senator Dwight Takamine, Vice Chair and  
Members

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

**Testimony in support of SB 516 SD1 relating to  
Physicians Orders for Life Sustaining Treatment**

Please accept my testimony in support of SB516, SD1 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.

**Elimination of Mandates in SD1**

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 SD1.

We would like to ask the committee to consider the following technical and content amendments:

Page 2 Line 8: delete “adopted,”

Page 2 Line 14: replace “implement” with “allow for”

Page 3 Line 4: Delete “designed” and replace with “adopted”

Page 3 Line 6: Change section 327E-1 to 327E-2 *(please note that 327 E is the correct statute: I am not certain as to correct reference within this context. E-2 has definitions in it)*

Page 3: Line 11: Insert a new 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.

Page 3: Line 11 Insert another new definition: “Patient’s Physician” means a physician licensed in the state of Hawaii who has examined the patient.

Page 3 Line 15: Correct the reference to 327E-1 to reflect \*-1 or \*-2 which ever is correct.

Page 4: Line 6 - 7: Strike “and the patient’s treating physician, if not the same”

Page 4, Line 13: Strike “treating physician,”

Page 4, Line 22: Strike “and treating physician, if not the same,” and add “EMS and emergency physicians”

Page 6, Line 14: Strike “shall” and replace with “may”

Page 6, Lines 16 through Page 7, line 16: Strike completely.

Page 6 Line 18: 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.

POLST is not an Advance Directive.

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