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To: House Committee on Judiciary
From: Cathy L. Takase, Acting Director

Hearing: Tuesday, February 23, 2010, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. 2575, HD1
Relating to Trauma

Thank you for the opportunity to testify regarding H.B. 2575, HD1. OIP takes no position on the substance of this bill, but is testifying to point out a technical problem and to express concerns regarding a broadly phrased confidentiality provision. OIP has been working with the Department of Health to resolve these concerns. It is OIP's understanding that DOH intends to propose an amendment using language reviewed by OIP that satisfies both OIP's and DOH's concerns. OIP would support this amendment.

At page 5, lines 10-12, the bill provides that the information described in that section "is not subject to chapter 92F. . . ." The effect of this language would be not simply to provide confidentiality, but would bring the information entirely outside the requirements of the Uniform Information Practices Act ("UIPA"), chapter 92F. In other words, the department would have no obligation to acknowledge receipt of a request and provide a reason for its denial as generally required; it could simply ignore requests for records containing that information.

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA's entire statutory scheme. OIP believes that, where the intent is to exempt certain records from disclosure, it is clearer and more appropriate to instead simply make the records "confidential." Where a record is made confidential, it may be withheld from disclosure under an exception to the UIPA and it may be considered in an executive meeting, i.e., a closed meeting, under the Sunshine Law. See Haw. Rev. Stat. § 92F-13(4) (1993) (exception to disclosure provided for government records protected by statute from disclosure); Haw. Rev. Stat. § 92-5(a)(8) (exception to open meeting requirement provided to deliberate or decide a matter that requires consideration of

information that is confidential by law). If the intent is to exclude this information from disclosure under the UIPA, OIP suggests the following amendment:

(e) Information held by the department as a result of patient care records and system performance reviews conducted under this part is ~~not subject to chapter 92F, confidential and is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that patient care records and system performance review information otherwise available from other sources is not confidential or immune from chapter 92F, subpoena, discovery, or introduction into evidence through those sources solely because they were provided as required by this part.~~

In addition to the technical problem caused by exempting information from the UIPA's entire statutory scheme, OIP also has concerns about whether a confidentiality clause in this bill is justified. It is not clear why the UIPA's exceptions for privacy, for records protected by "other law" (which would include the HIPAA medical privacy rules), and perhaps other UIPA exceptions, would not be sufficient to appropriately protect medical records collected by DOH. The only sort of information collected under this bill that might conceivably be disclosable under UIPA exceptions and HIPAA would be de-identified records – either non-patient-specific compilations, or records from which all indications of a patient's identity had been removed – and those records would carry a strong public interest in how DOH was performing its oversight function.

Thank you for the opportunity to testify.



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

In reply, please refer to:
File:

House Committee on Judiciary

HB 2575, HD 1, RELATING TO TRAUMA

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

Tuesday, February 23, 2010, 2:00 pm

1 **Department's Position:** The Department of Health strongly supports this Administration bill.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** In Hawaii, trauma is the leading cause of death and disability for those
4 1-44 years of age. The Department has been charged in Section 321-22.5, Hawaii Revised Statutes, with
5 building a comprehensive statewide trauma system to address this public health problem. The trauma
6 system will consist of multiple emergency medical service agencies, hospitals, and committees formed
7 to review and improve the care provided to patients within the system.

8 Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees seek broad
9 participation within health organizations to produce improvements in patient care. This involves
10 personnel from various disciplines reviewing records of care that they did not themselves provide, and
11 making recommendations for improvement. Without protection from discovery, such reviewers would
12 potentially become involved in medical malpractice cases just because they reviewed the case.
13 Recognizing that this seriously affects voluntary participation, QA and PR committees within hospitals
14 and health maintenance organizations are currently protected from discovery by Section 624-25.5,
15 Hawaii Revised Statutes. It is important to note that all patient records and other material pertinent to

1 investigation of potential medical malpractice remain available; it is only the committee's deliberations
2 and proceedings that are protected.

3 The Department has established the Hawaii Trauma Advisory Council (HTAC) consisting of
4 statewide representatives from hospitals, ambulance providers, and other representatives of
5 organizations with an interest in creating and improving a comprehensive statewide trauma system. The
6 HTAC has recommended, and the Department agrees, that subcommittees for QA and PR should be
7 convened to review cases for the purpose of improving patient outcomes. Finding that current law
8 would not apply to QA and PR subcommittees convened by the Department, we are seeking this
9 protection for these subcommittees with this measure. Such protections will assure the full participation
10 and broad involvement by the many key individuals and agencies needed to produce the best results
11 from the statewide trauma system. The Department proposes the attached amendments, developed with
12 the assistance of the Office of Information Practices, to clarify that the protections requested are not
13 broader than the intended purpose.

14 Thank you for the opportunity to testify on this bill.

15 **HB2575 PROPOSED HD2 DRAFT**

16 SECTION 1. The legislature has recognized that in Hawaii injury
17 is the leading cause of death for persons between the ages of one to
18 forty-four and, therefore, the improvement of trauma care in Hawaii
19 is a public health priority.

20 By Act 305, Session Laws of Hawaii 2006, the department of
21 health was charged with the continuing development and operation of a
22 comprehensive statewide trauma system in order to save lives and
23 improve outcomes of injured patients. To improve patient care, a
24 comprehensive trauma system requires the systematic review of

1 information related to patient care and system performance by all
2 parties involved in a protected environment that supports
3 participation and frank discussion. The importance of protecting
4 peer review of health care provided is recognized in Hawaii by
5 statute in section 624-25.5, Hawaii Revised Statutes. The department
6 of health's child death review is also protected under sections 321-
7 341 and 321-345, Hawaii Revised Statutes. This measure seeks to
8 establish that statewide emergency and trauma system multiagency and
9 multidisciplinary quality assurance and peer review subcommittees
10 convened and conducted by the department of health for the purposes
11 of making system improvements, have similar protections as those
12 committees formed by hospitals and health maintenance organizations.

13 SECTION 2. Section 321-230, Hawaii Revised Statutes, is amended
14 to read as follows:

15 **"§321-230 Technical assistance, data collection, evaluation.**

16 (a) The department may contract for technical assistance and
17 consultation, including but not limited to categorization, data
18 collection, and evaluation appropriate to the needs of the state
19 system. The collection and analysis of statewide emergency medical
20 services data, including pediatrics, trauma, cardiac, medical, and
21 behavioral medical emergencies, shall be for the purpose of improving
22 the quality of services provided.

23 The department may implement and maintain a trauma registry for
24 the collection of information concerning the treatment of critical

1 trauma patients at state designated trauma centers, and carry out a
2 system for the management of that information. The system may
3 provide for the recording of information concerning treatment
4 received before and after a trauma patient's admission to a hospital
5 or medical center. All state designated trauma centers shall submit
6 to the department [~~of health~~] periodic reports of each patient
7 treated for trauma in the state system in such manner as the
8 department shall specify.

9 In order to analyze, evaluate, and improve the statewide trauma
10 system and the services it provides to the public, the department may
11 form multidisciplinary and multiagency quality assurance and peer
12 review committees. These committees shall comprise representatives
13 of trauma, emergency, and tertiary care providers and agencies.
14 Within these committees, subcommittees may be created with the
15 express purpose of making recommendations to the department for
16 system improvements. These subcommittees shall have access to
17 patient care records and system performance data and shall be exempt
18 from chapter 92.

19 For the purposes of this subsection, "categorization" means
20 systematic identification of the readiness and capabilities of
21 hospitals and their staffs to adequately, expeditiously, and
22 efficiently receive and treat emergency patients.

23 (b) The department shall establish, administer, and maintain an
24 aeromedical emergency medical services system designed to collect and

1 analyze data to measure the efficiency and effectiveness of each
2 phase of an emergency aeromedical program.

3 The aeromedical emergency medical services system shall serve
4 the emergency health needs of the people of the State by identifying:

- 5 (1) The system's strengths and weaknesses;
- 6 (2) The allocation of resources; and
- 7 (3) The development of rotary-wing emergency aeromedical
8 services standards;

9 provided that emergency helicopter use, including triage protocols,
10 shall be based on national aeromedical triage and transport
11 guidelines established by the Association of Air Medical Services,
12 the American College of Surgeons and the National Association of
13 Emergency Medical Service Physicians. The department, in the
14 implementation of this subsection, shall plan, coordinate, and
15 provide assistance to all entities and agencies, public and private,
16 involved in the system.

17 (c) The department shall use an emergency aeromedical services
18 quality improvement committee comprised of representatives of trauma,
19 emergency, and tertiary care physicians and providers to analyze
20 information collected from the aeromedical quality improvement
21 performance measures as established by the American College of
22 Surgeons, and to recommend system standards and resources to maintain
23 and improve the Hawaii emergency aeromedical services system.

1 (d) No individual participating in the review of patient care
2 records and system performance as part of the department's quality
3 assurance, quality improvement, and peer review subcommittees
4 established for the purpose of making recommendations to the
5 department for system improvements, as set forth in subsection (a) of
6 this section, may be questioned in any civil or criminal proceeding
7 regarding information presented in or opinions formed as a result of
8 participation in those reviews. Nothing in this subsection shall be
9 construed to prevent a person from testifying to information obtained
10 independently of the department's multidisciplinary and multiagency
11 review of patient care records and system performance, or which is
12 public information, or where disclosure is required by law or court
13 order.

14 (e) Information held by the department as a result of patient care
15 records and system performance reviews conducted **by the department's**
16 **quality assurance, quality improvement, and peer review subcommittees**
17 **is confidential and is not subject to** subpoena, discovery, or
18 introduction into evidence in any civil or criminal proceeding,
19 except that patient care records and system performance review
20 information otherwise available from other sources is not immune from
21 chapter 92F, subpoena, discovery, or introduction into evidence
22 through those sources solely because they were provided as required
23 by this part.

1 (f) To the extent that this section conflicts with other state
2 confidentiality laws, this section shall prevail."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect July 1, 2050.

5



THE QUEEN'S MEDICAL CENTER

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Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair
COMMITTEE ON JUDICIARY

February 23, 2010 – 2:00 p.m.
State Capitol, Conference Room 325

Re: HB 2575, HD1 Relating to Trauma

Chair Karamatsu, Vice Chair Ito, and Members of the Committee,

My name is Caesar Ursic, MD, FACS, Trauma Medical Director for The Queen's Medical Center. I am testifying for The Queen's Medical Center in support of the establishment of statewide emergency and trauma system multiagency and multidisciplinary quality assurance and peer review committees convened and conducted by the department of health for the purposes of improving patient care, that have similar protections as those committees formed by hospitals and health maintenance organizations.

One of the cornerstones of modern medical care is an effective quality assurance program. Such a program must entail a recurrent, methodical and collaborative examination of actual patients and the treatments that they receive, both at an individual and systems level. This will then allow caregivers to identify problems and correct them as well as to improve upon already effective care.

The concept of a Trauma Multidisciplinary Quality Assurance (QA) and Peer Review (PR) process is one that has been validated by multiple national and international studies of trauma care as essential to improving outcomes. In other words, trauma systems with effective QA and PR programs save more lives than those without them. In a trauma system such as exists in Hawaii, *statewide* QA and PR committees would allow for the collection of reliable data, the ongoing and systematic analysis of trauma outcomes, the provision of feedback to participating trauma centers, hospitals and practitioners, and the identification of local or state-wide opportunities for improvement. All of these would result in higher survival and diminished disability for patients sustaining serious injuries in Hawaii.

Hawaii Revised Statutes, Section 624-25.5, recognizes the importance of protecting QA and PR committees within individual hospitals and health maintenance organizations from discovery. In order to encourage the honest, open and voluntary participation in statewide QA and PR committees, it is crucial to establish similar protections for statewide QA and PR committee members.

Thank you for the opportunity to testify.



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Tuesday, February 23, 2010 – 2:00pm
Room 325

The House Committee on Judiciary

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

From: Virginia Pressler, MD MBA
Executive Vice President

Re: **Testimony in Support of HB 2575 HD1 Relating to Trauma**

My name is Virginia Pressler, Executive Vice President at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a nonprofit health care system and the state's largest health care provider, committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 44 outpatient clinics and more than 2,200 physicians and clinicians. The network is anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Kapi'olani Medical Center at Pali Momi, Straub Clinic & Hospital and Wilcox Memorial Hospital. Collectively, they lead the state in the areas of women's health, pediatric care, cardiovascular services, bone and joint services and cancer care. Hawai'i Pacific Health ranks among the top 3.8 percent of hospitals nationwide in electronic medical record adoption, with system-wide implementation that allows its hospitals to offer integrated, coordinated care throughout the state. Learn more at: <http://www.hawaiipacifichealth.org>

We support HD 2575 HD1 Relating to Trauma which provides protection from discovery for the Department of Health trauma care multiagency and multidisciplinary peer review and quality assurance committees. This bill will allow the Department of Health to create a *system-wide* Trauma Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees to assure the same protections already offered within individual hospitals and health maintenance organizations from discovery. The protections provided by HB 2575 HD1 will allow the benefits of these committees to be applied toward the development and sharing of useful and systematic analysis of trauma outcomes towards the goal of improving quality.

A statewide trauma health system requires continuous improvement and collaboration amongst physicians, nurses, and other health care practitioners to discuss events involving patients. Being able to discuss these events without fear of reprisal is necessary to foster a candid and open environment for quality improvements to thrive across the trauma care system. Thank you for the opportunity to testify.



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HOUSE COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair

Conference Room 325
Feb. 23, 2010 at 2:00 p.m.

Supporting HB 2575 HD 1.

The Healthcare Association of Hawaii represents its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. Thank you for this opportunity to testify in support of HB 2575 HD 1, which protects information used by multi-agency quality assurance and peer review committees created by the Department of Health from being used in lawsuits.

The continuous improvement of the quality of health care requires physicians, nurses, and other health care practitioners to collaborate and to discuss events involving patients. Participants in the discussion must be able to speak freely among themselves without fear of reprisal so that they will not be afraid of raising relevant issues. These discussions often results in changes to procedures that improve patient safety.

Hawaii's statutes recognize the importance of what is known as the peer review process, and protects information used in this process from being used in lawsuits. Currently the peer review process is limited to being used by individual organizations.

The Department of Health has been charged with developing and maintaining a statewide trauma system, among its emergency care services responsibilities. Since a trauma system and emergency care system involve multiple organizations, peer review protections should be extended to committees with representation from these various organizations. By allowing the Department of Health to create multi-agency committees with peer review protections to discuss trauma care and emergency care, this bill facilitates the development of trauma care and emergency care in Hawaii.

For the foregoing reasons, the Healthcare Association supports HB 2575 HD 1.