

HB 2575



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CATHY L. TAKASE
ACTING DIRECTOR

To: Senate Committee on Health
From: Cathy L. Takase, Acting Director

Hearing: Friday, March 12, 2010, 3:15 p.m.
State Capitol, Room 016

Re: Testimony on H.B. 2575, HD2
Relating to Trauma

Thank you for the opportunity to testify regarding H.B. 2575, HD2. OIP continues to work with DOH and the Hawaii Association for Justice to find language regarding the confidentiality of records that will meet all parties' concerns.



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

In reply, please refer to:
File:

Senate Committee on Health

HB 2575, HD 2, RELATING TO TRAUMA

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

Friday, March 12, 2010, 3:15 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.

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



SENATE COMMITTEE ON HEALTH
Senator David Ige, Chair

Conference Room 016
March 12, 2010 at 3:15 p.m.

Supporting HB 2575 HD 2.

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 2, 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 2.



THE QUEEN'S MEDICAL CENTER

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 538-9011 • Fax: (808) 547-4646

Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
COMMITTEE ON HEALTH

March 12, 2010 – 3:15 p.m.
State Capitol, Conference Room 016

Re: HB2575, HD2, Relating to Trauma

Chair Ige, Vice Chair Green, 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.



AMERICAN MEDICAL RESPONSE®

March 12, 2010

The Honorable Senators
David Ige, Health Chair
Josh Green, Vice Chair
State Senate, Hawaii State Capitol
Honolulu, Hawaii 96813


RE: HB 2575, HD2 Relating to Trauma


Dear Chair Ige:

American Medical Response respectfully supports the passage of HB 2575, HD2. In Hawaii, trauma is the leading cause of death and disability for 1-44 years of age. As such, a trauma system consists of multiple emergency medical service agencies, hospitals, and committees formed to review and improve the care provided to patients within the system. Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees involve broad participation with health organizations to produce improvements in care. This process relies on participation from individuals from various disciplines to review records for care that they did not themselves provide. Without protection from discovery, such reviewers could potentially become involved in medical malpractice cases. This potential adverse outcome seriously affects voluntary participation in QA and PR committees. The protection this bill affords will enable participation and broader involvement by individuals and agencies needed to produce the best results from a statewide trauma system.

Thank you very much for this consideration. Please feel to contact me @ 487-4900 if you have any further questions.

Sincerely,


Speedy Bailey, General Manager
American Medical Response



Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
COMMITTEE ON HEALTH

March 12, 2010 – 3:15pm
State Capitol, Conference Room 016

Re: HB 2575 HD2 Relating to Trauma

Chair Ige, Vice Chair Green, and Members of the Committee,

My name is Wendi Wagner, RN, BA, MN, Trauma Program Coordinator at Kona Community Hospital. I am testifying in support of establishing statewide trauma multiagency and multidisciplinary quality assurance and peer review committees to be assembled and administered by the department of health for the purpose of improving Hawaii's trauma patient care services.

Thank you for the opportunity to testify.

**Testimony
in the matter of
HB 2575 HD2
Friday, 12 March 2010, 1515 hrs.
Room 016, The Capitol**

HB 2575, HD2

(HSCR467-10)

Testimony

Status

RELATING TO TRAUMA.

Provides statutory protection from discovery for the Department of Health trauma care multiagency and multidisciplinary peer review and quality assurance committees. Effective December 21, 2008.
(HB2575 HD2)

Senators Ige and Green, honored Members of the Committee on Health:

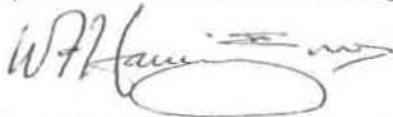
I am William Haning, M.D., testifying as a physician licensed in the State of Hawai'i whose duties include service overseeing the Screening and Brief Intervention, Referral to Treatment initiative for trauma patients with substance use disorders of the Department of Psychiatry, JABSOM, as well as service in the past as an emergency physician for 16 years. I am not testifying on behalf of the School of Medicine in which I am a Professor.

I strongly support passage of HB2575, HD2.

This bill extends already-existing peer review standards to the setting of traumatic injury research. It does not alter the conditions of access to routine records of health care. It does provide protection to records specifically within the purview of State Government in the limited context stated.

The basis for this peer review protection has been stated separately in several testimonies, including that of the Hawai'i Medical Association and Dr. Roy Magnusson, my colleague. We improve care by investigation. To be put in personal peril as a consequence of collecting such data makes little sense. The principle of peer review as a condition for quality assurance is long-standing and has contributed to the most technologically-advanced medical care in the world. It has also assured transparency, not secrecy, in examining quality of care outcomes. Please advance this bill to the floor recommending approval.

Thank you for considering this testimony in your deliberations, and I will make myself available for questions at the time of the hearing.



William F. Haning, III, M.D., FASAM, DFAPA
1256 Lusitana St. 4th Floor, Honolulu, Hawai'i, (808) 586-7436

dig

From: Jordan, Christopher MD [cjordan@WILCOXHEALTH.ORG]
Sent: Wednesday, March 10, 2010 11:32 AM
To: HTHTestimony
Cc: Peggy Sale
Subject: Hearing Notice Trauma Peer Review Bill
Attachments: Hearing Notice Trauma Peer Review.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Senate Health Committee Members,
I would like to have HB 2575 HD2 passed not only as a trauma surgeon on Kaua'i at Wilcox Hospital but as a trauma director who wants to hold meetings to review cases to figure out what we can do better without the fear of being sued. Thank you for your support,
Christopher Jordan MD, FACS
Chief of Staff, Wilcox Hospital
Trauma Director
General Surgeon
1-808-245-1577

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) FORMERLY KNOWN AS
CONSUMER LAWYERS OF HAWAII (CLH)
IN OPPOSITION TO H.B. No. 2575 HD 2
RELATING TO TRAUMA**

March 12, 2010

To: Chairman David Ige and Members of the Senate Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 2575 HD 2 Relating to Trauma.

HAJ has concerns about H.B. No. 2575 HD 2 as drafted because the language is too broadly worded and could be construed to limit discovery on factual information that should otherwise be subject to discovery in a civil proceeding. Accordingly, HAJ proposes language for H.B. No. 2575 HD 2, **SD 1**. Specifically:

1. The multidisciplinary, multiagency committees under this bill are composed of trauma, emergency, and tertiary care providers and agencies. This potentially is a very large group of people who would be exempt from discovery. HAJ is concerned that this language is too broad and could inappropriately extend protections to persons with factual information about an underlying medical event.
2. This bill protects members of the multidisciplinary, multiagency committees from being questioned in a civil proceeding regarding information presented or opinions formed as a result of their review, except where the member obtained the information independently or about public information. HAJ is concerned that this broad language could limit proper discovery of factual information simply

because it was the subject of review by the committee. HAJ does not object to protecting a committee member from being compelled to testify about confidential patient care records and information presented for the committee's review where the committee member's knowledge is based solely on the information presented for review and which is used as a basis for making recommendations on system improvements.

3. This bill protects from discovery against the DOH "information" obtained through patient care records and system performance reviews and characterizes such information as "confidential." It does not prohibit discovery of such records from other sources and such records are not protected from discovery solely because the records were provided to the DOH.

The intent of this bill is to protect "information" from disclosure, similar to the protections afforded to a hospital's Quality Assurance Committee (QAC) and Peer Review Committee (PRC). However, this bill attempts to protect the same type of documents that would otherwise be discoverable from a health care provider. Documents of factual information, such as incident reports, patient care records, and data and witness statements are not protected from discovery, even if reviewed by a QAC or PRC. Instead, it is the QAC's and PRC's proceedings and records of its proceedings, such as minutes, recordings and reports which are protected from discovery. HAJ is concerned that giving the DOH far greater protections than that of QAC's and PRC's would lead to abuse of the discovery system. Further, from a public policy standpoint, any documents related to

system performance reviews should be public records, provided personal identifying information is omitted.

We recently met with proponents of this bill from the Department of Health and a member of OIP to discuss possible solutions. The DOH representative felt that the review committee should be treated similar to a Quality Assurance committee or a peer review committee because the panel does review actual cases in its attempts to improve the trauma system.

Therefore, HAJ proposes that this type of trauma review committee be added to the definition of a Quality assurance committee which is currently part of the Hawaii Revised Statutes in HRS 634-25.5. This will give the review committee the same protections that are afforded to a Quality assurance committee and makes clear what documents and discussions are protected and what is discoverable.

In conclusion, HAJ has concerns about this proposed bill as written and has attached a proposed bill for your consideration which we feel should address the concerns of the DOH and HAJ. Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO TRAUMA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

By Act 305, Session Laws of Hawaii 2006, the department of health was charged with the continuing development and operation of a comprehensive statewide trauma system in order to save lives and improve outcomes of injured patients. To improve patient care, a comprehensive trauma system requires the systematic review of information related to patient care and system performance by all parties involved in a protected environment that supports participation and frank discussion. The importance of protecting peer review and quality assurance of health care provided is recognized in Hawaii by statute in section 624-25.5, Hawaii Revised Statutes. The department of health's child death review is also protected under sections 321-341 and 321-345, Hawaii Revised Statutes. This measure seeks to establish that statewide emergency and trauma system multiagency and multidisciplinary quality assurance subcommittees convened and conducted by the department of health for the purposes of making

system improvements, have similar protections as those committees formed by hospitals and health maintenance organizations.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

§624-25.5 Proceedings and records of peer review committees and quality assurance committees. (a) As used in this section:

"Case review forum" means any meeting convened by the administrative or professional staff of a licensed hospital or clinic for the presentation and critique of cases for educational purposes.

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment of patients for the purposes of evaluating and improving quality and efficiency of health care.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

"Preferred provider organization" or "preferred provider network" means a partnership, association, corporation, or other entity that delivers or arranges for the delivery of health services, and that has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

"Professional society" or "society" means any association or other organization of persons engaged in the same profession, occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice.

"Quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, or preferred provider network providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, to identify, study, and correct deficiencies in the health care delivery system to reduce the risk of harm to patients and improve patient safety or otherwise improve the quality of care delivered to patients. The Department of Health may establish a quality assurance committee for the purpose of monitoring, improving and evaluating patient care within the statewide trauma care system.

(b) Neither the proceedings nor the records of peer review committees, quality assurance committees, or case review forums shall be subject to discovery. For the purposes of this section, "records of quality assurance committees" are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports that state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, the committees. Except as hereinafter provided, no person in attendance at a meeting of a committee or case review forum shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(c) Information and data relating to a medical error reporting system that is compiled and submitted by a medical provider to a health care review organization for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or hospital quality assurance committee, shall not be subject to discovery.

For purposes of this subsection, the information and data protected shall include proceedings and records of a peer review committee, hospital quality assurance committee, or health care review organization that include recordings, transcripts, minutes, and summaries of meetings, conversations, notes, materials, or reports created for, by, or at the direction of a peer review committee, quality assurance committee, or a health care review organization when related to a medical error reporting system.

Information and data protected from discovery shall not include incident reports, occurrence reports, statements, or similar reports that state facts concerning a specific situation and shall not include records made in the regular course of business by a hospital or other provider of health care, including patient medical records. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were reviewed or considered by a medical provider for submission to, or were in fact submitted to, a health care review organization.

(d) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

(e) The prohibitions contained in this section shall apply to investigations and discovery conducted by the Hawaii medical board, except as required by sections 92-17, 453-8.7, or 663-1.7(e).

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

Report Title:

Trauma

Description:

Authorized the Department of Health to form multidisciplinary and multiagency advisory committees to recommend improvements to the statewide trauma system; provides statutory protection from discovery for advisory committees. Effective 7/1/50. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.