

SB2725

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) FORMERLY KNOWN AS
CONSUMER LAWYERS OF HAWAII (CLH)
IN OPPOSITION TO S.B. No. 2725**

February 4, 2010

HTT Hearing: February 8, 2010, 2:45 pm

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 S.B. No. 2725.

While HAJ supports the intent of the Governor's proposed legislation to keep certain aspects of mental health examinations from public disclosure, we oppose this bill for the following reasons:

1. The proposed amendment is overbroad and appears to conflict with other sections within Chapter 704. Specifically, the bill proposes to restrict public access to a report on a criminal defendant's physical or mental condition and its contents by limiting disclosure to the DOH, the prosecutor and the criminal defendant's counsel. However, under existing law, the report is ordered by the court when, among other reasons, the criminal defendant puts his/her mental/physical condition into dispute. Arguably, the criminal defendant would have waived his/her right to privacy and confidentiality upon assertion of the mental/physical condition. Yet, under this proposed bill, the report is protected from disclosure, even though its contents would be publicly disclosed in a contested fitness hearing under section 704-405 or if the report examiners are

called to testify under section 704-410. It makes little sense to maintain the report as confidential after it has been publicly disclosed in a court proceeding.

2. The proposed amendment establishes a new standard for disclosure and could unfairly restrict another criminal or civil court from disclosing the report upon a showing of good cause. A criminal defendant could also be a defendant in a civil action or be an agent/employee of a civil defendant. Under this bill, an injured plaintiff in a civil action who seeks disclosure of a confidential physical/mental examination report ordered under section 704-404 would be required to show that the report is "necessary for the conduct of the proceedings before [the court] and that failure to make the disclosure would be contrary to the public interest." Thus, while criminal cases are prosecuted in the "public interest," not all civil actions are brought in the "public interest." Hence, this is too harsh a standard for disclosure, particularly in a civil action where the burden of proof is less stringent than in a criminal case. Instead, the court should use a "good cause" standard to determine whether the confidential report should be disclosed.

HAI suggests the following revisions to S.B. No. 2725, which also includes other technical changes:

"(10) Except as provided in this section, physical or mental health examination reports and supporting documents submitted to the court pursuant to this section shall be kept confidential and shall not be disclosed by any person. If the physical or mental health examination report or testimony by any of the examiners is admitted into evidence in a contested hearing held pursuant to section 704-405 and 704-410, the report shall not be deemed confidential and shall be maintained in the public record. Any criminal or civil court may direct disclosure of a confidential physical or mental health examination

report submitted pursuant to this section to persons or entities other than those identified in this section upon a showing of good cause.

(11) For purposes of this section "dispositive orders" are defined as any orders that affect the legal status of the defendant, including orders for examination, orders finding defendant fit to proceed, orders finding defendant unfit to proceed, orders acquitting defendant pursuant to section 704-411, orders concerning discharge, conditional release and modification of conditional release, after acquittal and commitment pursuant to sections 704-412, 704-413, 704-414, and 704-415, and orders of civil commitment in lieu of prosecution or sentence pursuant to section 706-607."

HAI recognizes that certain types of information, such as personal identifiers like social security numbers and personal information about family members, should be withheld from disclosure. However, HAI opposes this bill as written because it goes too far. It unnecessarily restricts access to physical or mental health examination reports prepared in a criminal case, even after the contents have been publicly disclosed, and creates a harsher standard for disclosure in another action, particularly a civil action. HAI requests the bill be amended as suggested above. Thank you for the opportunity to testify.



55 Merchant Street
Honolulu, Hawai'i 96813-4333

HAWAII PACIFIC HEALTH
Kapi'olani • Pali Momi • Straub • Wilcox

808-535-7401
www.hawaiipacifichealth.org

Monday, February 8, 2010 – 2:45pm
Conference Room 016

The Senate Committee on Health

To: Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

From: Michael Robinson
Executive Director, Government Relations

Re: **SB 2770/Testimony in Support**

My name is Michael Robinson, Executive Director Government Relations 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.

We are writing in support of SB 2770 which amends to the definitions of remote dispensing machine and remote dispensing pharmacy permitting the implementation of Act 96-2009. In 2009 the legislature passed and the governor signed Act 96 which was SB 585 making amendments to the remote dispensing law to permit remote dispensing in remote areas and by HMO's in their own facilities.

This bill simply clarifies definitions to make them consistent with the intent of Act 96.

We urge you to pass this bill and thank you for your consideration.



Affiliates of Hawai'i Pacific Health