

**SB2898**

**PRESENTATION OF THE  
BOARD OF NURSING**

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Tuesday, February 23, 2010  
10:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2898, RELATING TO DIVERSION PROGRAM FOR  
CHEMICALLY DEPENDANT NURSES.**

TO THE HONORABLE DAVID Y. IGE, CHAIR,  
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Kathy Yokouchi and I am the Executive Officer of the Board of Nursing ("Board"). I thank you for the opportunity to present testimony in strong support of Senate Bill No. 2898, Relating to Diversion Program for Chemically Dependant Nurses.

This bill amends the requirements for diversion programs for chemically dependent nurses to allow the Board to recognize alternative program sponsors. It clarifies disciplinary and report requirements.

The Board is in support of Senate Bill No. 2898 because:

- In Section 1, page 1 (lines 1-18) and page 2 (lines 1-14), the Board agrees with the Legislature that consumers would be better served if the third party sponsor of the diversion program be open to other sponsors and not limited to the Hawaii Nurses' Association;
- Other sponsors available such as First Lab which have the resources, expertise and experience would increase the viability of the diversion program;

- In Section 2, page 2 (lines 17-22) and page 3 (lines 1-10) the 1995 legislative findings which justified the establishment of a diversion program are deleted;
- In Section 2, page 3 (lines 14-18) the provision is deleted which currently precludes the Board from taking further disciplinary action on nurses who abide by the terms and conditions of the program, but who may still be in the diversion program. The Board feels that this preclusion should only apply **after** a nurse has successfully completed the conditions set forth in Section 3, page 5 (lines 9-20);
- The new intent of the diversion program as provided in Section 3, page 3 (lines 18-22) is to give impaired nurses the opportunity to be rehabilitated and to protect the consumer (unlike the current intent which is to ensure that further disciplinary action will not be taken);
- Section 3, page 4 (lines 6-7) allows for other types of sponsors to assume the third party role of the diversion program besides a professional association;
- The function of the program in Section 3, page 4 (lines 7-11) further clarifies the intent of the program;
- Updating the title to Executive Officer in Section 3, page 5 (line 3) which is the title recognized by the other 49 states and territories for decades;
- In Section 3, page 5 (line 7), replacing professional association with monitoring entity is consistent with the intent of this measure;
- The conditions set forth in Section 3, page 5 (lines 9-14) before further disciplinary action can be waived (lines 15-20) would provide increase consumer safety; and

- The penalty for a noncompliant nurse is added in Section 3, page 5 (lines 21-22) and page 5 (lines 1-3).

The Board supports the amendments proposed by the DCCA Regulated Industries Complaints Office ("RICO") in:

- Section 3, page 4 (line 8) which adds "assess and, where appropriate" so the provision reads:  
"The function of the diversion program shall be to assess and, where appropriate, rehabilitate nurses whose competencies...";
- Section 3, page 5 (lines 15-20) which deletes current language and replaces it with:  
"(g) A nurse who fully complies with this chapter and the rules adopted by the board pursuant to this chapter, and who completes all the requirements of a diversion program approved by the board, shall not be subject to further disciplinary action by the board for a violation of section 457-12(a)(4)."; and
- Section 4, page 6 (lines 10-16) which revises current language to read:  
(b) All records of a nurse participating in a [~~peer assistance~~]diversion program that [~~do not involve reporting~~]are not required by law to be reported to [~~or disciplinary action by,~~] the board of nursing or the regulated industries complaints office and do not involve disciplinary action by those entities shall be privileged and shall not be subject to discovery or subpoena by any person or entity other than the board of nursing and the regulated industries complaints office."

For these reasons, the Board of Nursing strongly supports Senate Bill No. 2898 with the amendments proposed by RICO. Thank you for the opportunity to testify.



LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2010

TUESDAY, FEBRUARY 23, 2010  
10:00 A.M.

TESTIMONY ON SENATE BILL NO. 2898  
RELATING TO DIVERSION PROGRAM FOR CHEMICALLY DEPENDANT NURSES

TO THE HONORABLE DAVID Y. IGE, CHAIR,  
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE JOSH GREEN, M.D., VICE CHAIR,  
AND TO THE HONORABLE DAVID Y. IGE, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to testify on Senate Bill No. 2898, Relating To Diversion Program For Chemically Dependant Nurses. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO offers the following comments on the bill.

Senate Bill No. 2898 amends Chapter 334D, Hawaii Revised Statutes ("HRS"), to allow the Board of Nursing to recognize alternative sponsors for diversion programs for chemically dependent nurses. The bill also clarifies disciplinary and reporting requirements.

RICO takes no position on Sections 1 and 2 of the bill.

Regarding Section 3 of the bill, at page 4 lines 6-11, RICO suggests that in addition to rehabilitation, the purpose of the diversion program include assessing whether the nurse can or should continue the practice of nursing in a manner that is beneficial to the public. As such, RICO recommends that the phrase "assess and, where appropriate," be added at page 4 line 8 so that the sentence reads:

"The function of the diversion program shall be to **assess and, where appropriate**, rehabilitate nurses whose competencies . . ."

Regarding Section 3 of the bill, at page 5 lines 15-20, RICO suggests that the language of this Section be more narrowly tailored to the particular circumstances that were addressed through the diversion program. As currently drafted, this Section would capture even disciplinary violations unrelated to chemical dependency or unrelated to the incidents that gave rise to treatment. RICO suggests that the language in subsection (g) (page 5 lines 15-20) be deleted and replaced with the following:

**(g) A nurse who fully complies with this chapter and the rules adopted by the board pursuant to this chapter, and who completes all the requirements of a diversion program approved by the board, shall not be subject to further disciplinary action by the board for a violation of section 457-12(a)(4).**

Regarding Section 4 of the bill, RICO requests that this Section be clarified to indicate clearly that the privilege and bar to discovery does not apply to the Board or to RICO. RICO cannot take disciplinary action unless it has evidence of a violation or

violations. For example, if RICO receives, pursuant to §334D-3(e), HRS, the name of a nurse who fails to comply with the diversion program, it must be able to obtain the treatment records relating to the licensee, especially as those records relate to noncompliance. If RICO receives a report of a lapse after "successful" completion of a diversion program, those treatment records are also relevant in providing the Board with a clear picture of the appropriate sanctions to take in a subsequent disciplinary proceeding.

RICO recognizes that confidentiality and the bar to discovery and subpoena may be appropriate to facilitate treatment in a manner that does not subject the licensee to civil liability, but the oversight role of the Board and RICO are distinguishable in that the Board must be able to accurately assess the condition of the licensee in order to effectively determine the risk to the public and the extent to which the licensee's conduct must be restricted, limited, suspended, or monitored. Therefore, RICO suggests that the bill at page 6 lines 10-16 be revised as follows:

~~(b)] All records of a nurse participating in a [peer-assistance] diversion program that [do not involve reporting] are not required **by law** to be reported to [the board of nursing or the regulated industries complaints office and do not involve disciplinary action by those entities shall be privileged and shall not be subject to discovery or subpoena **by any person or entity other than the board of nursing and the regulated industries complaints office.**~~"

Thank you for this opportunity to testify on Senate Bill No. 2898. I will be happy to answer any questions that the members of the Committees may have.

TO:

COMMITTEE ON HEALTH  
Senator David Y. Ige, Chair  
Senator Josh Green, M.D., Vice Chair  
and  
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice Chair

DATE: Tuesday, February 23, 2010

TIME: 10:10 am

PLACE: Conference Room 16

State Capitol

FROM: Dr. Linda Beechinor, APRN-Rx

Past President and past Acting Executive Director of Hawaii  
Nurses Association

Current elected representative of Independent Members of  
American Nurses Association

Re: SB 2268 Relating to Diversion Program for Chemically  
Dependent Nurses

Thank you for the opportunity to speak in strong support of this bill and the  
Hawaii Board of Nursing's testimony.

Please call on me for further information at anytime.

Dr. Linda Beechinor, APRN-Rx  
500 Lunalilo Home Rd. # 27-E  
Honolulu Hawaii USA 96825  
phone: (808) 779-3001 fax (808) 395-7428  
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**Testimony  
in the matter of  
S.B. 2898  
Tuesday, 23 February 2010, 1000 hrs.  
Room 016, The Capitol**

**Senators Ige, Green, and Baker, and honored Members of the Committees on Health and on Commerce and Consumer Protection:**

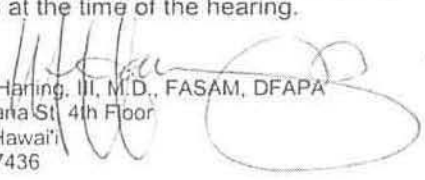
I am William Haring, M.D., testifying as Past President and President-Elect of the Hawai'i Society of Addiction Medicine, on the Society's behalf. Board-certified in psychiatry, addiction psychiatry, and addiction medicine, I am a Professor of Psychiatry at the John A. Burns School of Medicine and Chairman of the Board of Directors of the Hawaii Physicians Health Program, a nonprofit agency providing intervention and monitoring for physicians and dentists within the provisions of the peer review statutes; I am not testifying on behalf of of the School of Medicine or the Hawaii Physicians Health Program.

**The Hawaii Society of Addiction Medicine voices its strong support for Senate Bill 2898,** relating to a diversion program for chemically dependent nurses. While the original legislation in 1993 was excellent in intent, it proved difficult in execution, for a number of reasons that included administration and funding. There is successful modeling for the programs suggested in this newer act, both in Hawai'i and in other states.

As of this writing, while it is possible for physicians both to be referred by peer review agencies and to seek assistance independently, for intervention, advocacy, and monitoring services, those same opportunities do not exist for Hawai'i's nurses. Implementation of this act would allow the Board of Nursing to both identify and establish working relationships with peer assistance and diversion programs for the nursing community.

It is my hope that as success is demonstrated with a nursing program to the same degree that it is now being demonstrated with physicians, the definition of impairment may be expanded to include many of the chronic, progressive, and relapsing diseases which obstruct delivery of safe care and from which afflicted providers can be assisted to recover. Drug and alcohol dependencies are, in fact, chronic diseases, and provide a metaphor for management. Whether it is diabetes mellitus, crippling neurological and locomotor disorders, major depressive disorder, or alcohol dependence, many obstacles to care and intervention are shared and can be overcome. Substance use disorders among health professionals in particular have a high recovery rate when a rigorous program of careful diagnosis, treatment, and monitoring is applied. There are a number of reasons for this, but the evidence for this statement is solid. Any reflex employment of punishment or of de-licensure is unnecessary and deprives the community of extremely expensive professional resources. Even more plainly, these "professional resources" have souls. We should treat our injured and ill providers with the same compassion that members of the community would want themselves to be treated.

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. Haring, III, M.D., FASAM, DFAPA  
1256 Lusitana St, 4th Floor  
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(808) 586-7436

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 19, 2010 11:59 AM  
**To:** HTHTestimony  
**Cc:** geesey@hawaii.edu  
**Subject:** Testimony for SB2898 on 2/22/2010 3:00:00 PM

Testimony for HTH/CPN 2/22/2010 3:00:00 PM SB2898

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Yvonne Geesey  
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Submitted on: 2/19/2010

Comments:  
Aloha!

Please pass this important update to our diversion program for chemically dependent nurses.

Mahalo,  
Yvonne Geesey  
American Academy of Nurse Practitioners Hawai'i State Representative

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 21, 2010 11:45 PM  
**To:** HTHTestimony  
**Cc:** wailua@aya.yale.edu  
**Subject:** Testimony for SB2898 on 2/22/2010 3:00:00 PM

Testimony for HTH/CPN 2/22/2010 3:00:00 PM SB2898

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Wailua Brandman APRN-Rx BC  
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Submitted on: 2/21/2010

Comments:

This is a good bill. It will help the Board, impaired nurses and patients as well. I strongly support SB2898. Please pass this bill.

Respectfully,

Wailua Brandman APRN-Rx BC, President  
Hawai'i Association of Professional Nurses

Member APRN Advisory Committee to the BON

O'ahu Director-at-Large, American Psychiatric Nurses Association Hawai'i

Clinical Director, Ke'ena Mauiola Nele Paia, LLC



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
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The Twenty-Fifth Legislature, State of Hawaii  
 Hawaii State Senate

Committee on Health  
 Committee on Commerce and Consumer Protection

Testimony by  
 Hawaii Government Employees Association  
 February 23, 2010

S.B. 2898 – RELATING TO  
 DIVERSION PROGRAM FOR  
 CHEMICALLY DEPENDENT  
 NURSES

The Hawaii Government Employees Association, AFSCME Local 125, AFL-CIO supports the purpose and intent of S.B. 2898 – Relating to Diversion Program for Chemically Dependent Nurses. In 1993 Session Laws of Hawaii, the legislature established a diversion program for nurses with chemical dependency problems and placed the program under the oversight of the Board of Nursing. Under existing law, only nurses who have been reported by the Hawaii Nurses Association (HNA) are able to participate in the diversion program. Allowing the Board of Nursing to recognize programs provided by additional sponsors that provide programs that meet the board's requirements would better serve the public.

The current law precludes the Board of Nursing from disciplining nurses who abide by the terms and conditions of the diversion program. Continuing this policy of no disciplinary action against a nurse who has successfully complied with the diversion program and has been rehabilitated would be encouraging to nurses rather than nurses considering rehabilitation to be negative.

The intent of the diversion program established by this bill is to develop a voluntary alternative to traditional disciplinary actions that provides adequate protections for the health, safety and welfare of the public. The function of the diversion program is to rehabilitate nurses whose competencies become impaired due to abuse of drugs or alcohol would provide treatment so nurses are able to return to or continue the practice of nursing that would be beneficial to the public.

Hawaii State Senate - Committee on Health  
- Committee on Commerce and Consumer Protection  
Re: S.B. 2898 – Relating to Diversion Program for Chemically Dependent Nurses  
February 23, 2010  
Page 2

The field of nursing is always in demand, and having the diversion program would encourage nurses who have a chemical dependency problem to seek help and allow this state to retain our nurses in continuing to service the public.

Thank you for allowing us to provide testimony in support of S.B. 2898.

Respectfully Submitted,



Nora A. Nomura  
Deputy Executive Director

Written Testimony Presented Before the  
Senate Committee on Health  
and  
Senate Committee on Commerce and Consumer Protection

February 23, 2010, 10:00 a.m.  
by  
Mary G. Boland, DrPH, RN, FAAN

SB 2898 RELATING TO DIVERSION PROGRAM FOR CHEMICALLY DEPENDANT  
NURSES

Chair Baker, Vice Chair Ige, and members of the Senate Committee on Commerce and Consumer Protection, thank you for this opportunity to provide testimony in support of this bill, SB 2898, amending requirements of the diversion program for chemically dependent nurses to allow the Board of Nursing to recognize alternative program sponsors. I am providing personal testimony on this measure.

I support the Board of Nursing's role to recognize additional third-party sponsors to provide expertise and treatment support to chemically-dependent nurses in their rehabilitation process. This bill clarifies the conditions regarding disciplinary action to protect the consumer while supporting the nurse's rehabilitation. By implementing this act, the foundation for a non-punitive approach that balances treatment, monitoring and commitment to patient safety will be established. The Board of Nursing will be able to identify and establish working relationships with peer assistance and diversion programs for the nursing community.

I appreciate your continuing support of nursing and healthcare in Hawai'i. Thank you for the opportunity to testify.