

SCR123



UNIVERSITY OF HAWAI'I SYSTEM

Legislative Testimony

Written Testimony Presented to the
Senate Committee on Health
Wednesday March 17, 2010
2:45 p.m. Conference Room 016

by

Virginia S. Hinshaw, Chancellor
And

Jerris R. Hedges, MD, MS, MMM
Dean and Professor of Medicine
Barry & Virginia Weinman Endowed Chair
John A. Burns School of Medicine
University of Hawai'i at Mānoa

Aloha, Chair Ige and members of the Senate Committee on Health. Thank you for this opportunity to testify on SCR 123 and SR 53, affecting naturopathy.

The University of Hawai'i at Manoa's John A. Burns School of Medicine is compelled to express that we see a number of potential dangers in the law governing neuropathy passed last session and now referred to as Act 22.

The act redefined "naturopathic medicine" to include a number of clinical and therapeutic practices that naturopaths did not previously have, including:

1. Office procedures (suturing etc...);
2. Legend medications prescriptions (Rx only meds);
3. Ordering and reading of images (including pet scanners, CT scanning etc...); and
4. Administering drugs via parenteral (inject or IV) route.

Act 22 allowed unrestricted practice of medicine to providers with incomplete training and we believe it requires steps to mitigate its potential harmful impact.

For background, Act 22 also requires that the changes it contained not occur until the Board of Naturopathy adopted rules regarding the above practices. Because the Board forbids parenteral injections currently, these two new measures (SR53, SCR123) are apparently intended to press the board to create this opportunity. We respectfully suggest that the Legislature, which created the Board, not direct the Board in its responsibility to protect the public in this area.

We prefer instead you consider two other measures directly related, but currently awaiting public hearings to be scheduled. They include SB 2489, which basically deletes language relating to parenteral meds, procedures and legend drugs from the

previous statute. We prefer SB 2489 for the safety of Hawai'i's citizens and the promotion of better medical practices. Another bill, HB2312 HD2, has been considered by a House committee and is before a Senate Health committee awaiting a hearing. It would create a formulary committee with a majority of pharmacists and MDs to review and update a limited formulary every 2 years, an approach we prefer as "second best" to SB 2489.

Mahalo for this opportunity to offer guidance.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

Wednesday, March 17, 2010, 2:45 PM, CR 16

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

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: SCR 123 AND SR 53 URGING THE BOARD OF NATUROPATHIC MEDICINE TO MAKE RULES CONSISTENT WITH ACT 222, SPECIAL SESSION LAWS OF HAWAII 2009, TO ALLOW NATUROPATHIC PHYSICIANS TO PERFORM PARENTERAL THERAPY.

The Hawaii Medical Association appreciates the opportunity to provide comments on this measure.

As you are aware, last year, changes in Hawaii state law expanded the scope of practice of naturopaths to include parenteral therapy. The new law defines parenteral therapy "the administration of substances by means other than through the gastrointestinal tract, including intravenous, subcutaneous and intramuscular injection."

There are many negative complications which will likely result from this clause if there continues to be no pharmacist and MD or DO input allowed on their board, as was seen by the extensive allowance for drugs typically only prescribed by medical specialists in the ND 2010 formulary. One example is that their current formulary allows ND's to prescribe the entire category of "antidepressants," most physicians will not prescribe these drugs because the potential for negative side effects is so high that prescribing these medical specialty drugs warrants years of additional residency training.

As we don't have the space and you don't have the time to hear all of the potential negative complications of encouraging a board made up of only Naturopathic Doctors and two lay people to develop extensive parenteral therapies, we would like to share one example with you, as outlined by the American Society for Dermatologic Surgery:

"We are deeply concerned with the broad-based nature of this language, as there have been many incidences of patient disfigurement due to the injection of FDA-approved prescription cosmetic drugs and medical devices by inadequately trained non-physicians.

As dermatologic surgeons, we are particularly concerned with injections of botulinum toxins and dermal fillers. It is the position of the ASDSA that FDA-approved prescriptive

OFFICERS

President - Robert Marvit, MD President-Elect - Morris Mitsunaga, MD Secretary - Thomas Kosasa, MD
Immediate Past President - Gary Okamoto, MD Treasurer - Stephen Kemble, MD Executive Director - April Donahue

dermal fillers and botulinum toxins for cosmetic medical use be administered by physicians only. Dermal fillers and botulinum toxins require extensive specialized physician knowledge to ensure the highest level of care. The precise placement of a needle for a botulinum toxin injection or the exact depth of administration of a dermal filler is a specialized type of injection. Additionally, the tolerance for adverse events for these specialized injections is comparatively low to that of typical injections.

Complications resulting from the use of dermal fillers, while rare, are frequently caused by poor injection technique. Proper placement of fillers with reduced side effects is largely dependent upon depth of understanding of facial anatomy, and knowledge of chemical and physical properties of the agents themselves. Appropriate training should include an appreciation of normal facial anatomy and the changes that occur with aging and illness; a working knowledge of the location, thickness, and properties of the soft tissue layers, and the location and course of major arteries and nerves; as well as familiarity with indications, technique, postoperative care, and potential complications and their management. "

Naturopathic doctors have less training and education requirements than Medical Doctors, Doctors of Osteopathy, and other health care practitioners, particularly in the implementation of pharmacology in direct patient care, and naturopaths have **no continuing education** or residency requirements in Hawaii.

Bringing in the expertise of physicians and pharmacists in determining the naturopathic formulary will help protect patient safety.

Dr. Myron Berney, ND Lac
naturalcancerwellness.com

Testimony for SCR 123 and SR 53
Testimony for SCR 123 and SR 53
Wednesday, March 17, 2010 2:45:00 PM
Conference Room 016

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

Just like myself all beings want to be happy and avoid unhappy suffering especially the suffering of pain and illness, sickness and death. Monday, Barack Obama, the President, spoke in Ohio at one of his health care reform stumps about a breast cancer survivor who was to introduce him that evening. She couldn't be there because she was now sick and hospitalized with leukemia.

After my chemo failed at Queens, I selectively killed my cancer using natural cancer wellness and iv Vitamin C. I cured my congestive heart failure with Co Q10 and iv Vitamin C plus.

Natural Cancer Wellness represents a shift in consciousness away from the War on Cancer where the collateral damage is your own precious human body. In natural cancer wellness, we don't use anything that will kill our patients. We selectively kill the cancer cell by making the body healthier. This depends upon a combination of nutritional therapies, herbal medicine and others goodies which individually help some patients but in combination they synergistically help many many times more. Good things add to good things make things better and better. Bad things on top of bad things that the chemo route.

One of the most powerful anti-cancer natural wellness therapies was initially introduced by Linus Pauling over 30 years ago. This genius biochemist noble prize laureate became the "Enemy of the State" due to his breakthrough discoveries in biochemistry and nutritional therapy.

Biochemistry, the union of biology and chemistry is the chemistry of biological systems. DNA, RNA, proteins, enzymes, vitamins and minerals, everything in the living cell, these all are biochemistry. That's one way of looking at a cell, at biological systems.

We know Vitamin C to be an anti-oxidant. That means that it is involved in oxidation-reduction reactions. At physiological saturation levels, Vitamin C flips from an anti-oxidant to a pro-oxidant, releasing hydrogen peroxide free radicals. Similar to pouring peroxide on a cut, it bubbles up releasing oxygen for the normal cells health promoting wellness. Cancer cells, on the other hand, can not handle the hydrogen peroxide bubbling off its free radicals. Lacking catalase the cancer cells are selectively killed. This biochemical mechanism was published by the National Institute of Health, not just once, but twice stating that **Vitamin C will selectively kill human cancer cells but not normal human cells.**

When it comes to Cancer, nothing can be better than that! To be able to selectively kill human cancer cells but not normal human cells is like a miracle for cancer patients. It won't work for everybody but most definitely it has worked for myself and many others. For those patients that need chemo, high dose vitamin C has helped them live up to 3 times longer being able to finish their chemotherapy.

So why isn't Governor Lingle and her HMA happy? I am guessing its the cash flow.

The Legislative Auditor reported over 10 years ago that Naturopathic Medicine would save money immediately. This year Federal studies show that 50% of the health care dollar is wasted on a lack of wellness. Wellness is big business in America. Violating the principles and policies of the FTC is a costly thing to undertake. You have succeeded in creating the worst health care delivery system on the Planet at the most expense for consumers and the most profit for stockholders in the insurance industry and the pharmaceutical industry and the drug cartels.

What the AMA can not achieve due to prior Federal Trade Commission legal action they now depend upon legislators and lobbyists. Through fear, slander and disinformation, the AMA makes law to eliminate Naturopathic Medicine, monopolizing and destroying health care delivery. We saw this tactic this legislative session with SB2489 and HB2312. These distasteful bills seeking to destroy naturopathic medicine were killed in the Senate and gutted in the House and is

now stuck as an HD2 in the Senate. **This would make a great vehicle for Grandfathering injection.**

Parenteral therapy including injection has always been part and parcel of Naturopathic Medicine and authorized by prior boards and prior Law. Prior to the reforms in the early 1982, the Board approved injection under the language of "congenial means" meaning suitable for the patient's needs. Prior to the Lingle Administration, injection was within "natural procedures". The Lingle administration held that it was in the gray area and pushed for a ban on injection.

Injection is a Natural Procedure because:

A procedure is

1. A particular course of action intended to achieve a result
2. A process or series of acts especially of a practical or mechanical nature involved in a particular form of work
3. A set sequence of steps, part of larger computer program

operative adj. Means

1. Relating to, requiring or amenable to treatment by surgery especially as opposed to medicine
2. Effective; producing a desired effect
3. performing or capable of performing

Injection is a procedure for the administration of fluids or drugs.

A snake bite is an injection.

Snakes bite naturally.

A snake bite is a natural injection.

Injection is a procedure.

A snake bite is a natural procedure.

Natural procedures include snake bites, a natural injection.

Injection is a natural procedure.

However, injection is not a limited to licensed professionals. By Law, iv drug users are give needle exchange. Little kids self inject prescription drugs for diabetes, shortness or bee stings etc. Care givers give other family members injection when necessary and appropriate. Injection is not prohibited by law except for trained, educated and licensed Naturopathic Physicians in Hawaii. OK for junkies and kids but bad for trained, educated and licensed Naturopathic Physicians or for a non-toxic, safe, inexpensive life saving therapy for cancer and pandemic viral disease. IV Vitamin C is safer than salt and safer than sugar!

Each year hundreds of cancer patients are harmed and tens of millions of dollars are wasted by the Lingle Medical Death Consortium.

I am in 200% support of SCR 123 and SR53. These resolutions express the Legislative intent of SB420 and Act 22 of the 2009 Special Session and urge the Board to make rules to permit the historical and traditional practice of parenteral therapy including injection.

Last session SB 420 was passed by the legislature with zero no votes in any committee. SB 420 became Act 22 after a landslide veto override. Only two Republican members of the House voted with the Governor. This was the second time the Governor vetoed similar bills clarifying the practice of injection by Naturopathic Physicians. Ironically, in her veto message the Governor gave as her basis for the veto that she preferred the language in the bill she vetoed two years earlier.

The Lingle Administration, planning ahead, implanted a legal "virus", a glitch into the bill to sabotage the law.

The Lingle Administration demanded the following language within:

"§455-6 Powers and authority of the board. (2) (C) Shall establish the education and training requirements for parenteral therapy and the standards to administer parenteral therapy, and establish examination standards and require the passage of an examination on minor office procedures, which standards and requirements shall take effect after December 31, 2009; [by the way this part of the law does not qualify as being good or clear English]"

This language provided the Lingle Administration with a method to sabotage on-going health care delivery, deliberately and maliciously cutting me off my ongoing cancer therapy that continues to save my life.

By not making rules the Lingle Administration has a quasi-legal method to violate Article IX of the Hawaii State Constitution that requires “protection and promotion of the public health”.

How is killing me and depriving cancer patients of effective nutritional therapies “protection and promotion of the public health”?

The Board was not empowered to cut off ongoing care for patients dependent upon parenteral therapy including injection.

Under the smoke screen of providing “protection and promotion of the public health” through rule making; The Lingle administration actually conspired to sabotage the public health for the benefit and profit of a single industry. [remember the Super ferry and the Court's basis for the unconstitutional court decision being “for the benefit of a single industry.”?]

The Legislature in no other law requires rule making activity by the Board. Traditionally the Legislature just hands them the Law and they make rules as necessary. That's what boards do, make rules and implement the law. Without a mandate the board makes rules but with a mandate the board violates the Constitution and basic fundamental Human Rights — both the Right to Life and Choice in Health Care decisions.

As of January 1, 2010 the Lingle Administration including the State board of naturopathic medicine turned the Law UPSIDE DOWN banning all parenteral therapy including injections of dietary supplements that had been previously included in the Law and approved by prior boards.

By banning injections, that were previously part and parcel of naturopathic medicine and practice, the Lingle Administration including the State board of naturopathic medicine has interrupted ongoing patient care threatening health, wellness, life and limb of patients in the State of Hawaii. This creates a health care crisis for hundred of patients.

The Legislature in Act 22 intended to codify the general and historical practice of parenteral therapy by naturopathic physicians. Senator David Ige, Senate Chair of the Health Committee, told me that the Legislature presumed that the Board would follow the example of other boards and would rely upon the accredited schools of naturopathic medicine as their basis for education and training for parenteral therapy as required in the existing Law.

This would make a great “Whereas” and give guidance and direction to the Board in their rule making activity.

Currently the board is wrongly proposed in their rule making to use an unaccredited continuing education program, which in itself is a violation of Law, and participation therein a licensing violation by the participating naturopathic physicians, as a licensing requirement for persons who have far exceeded the current state licensing requirements. It's impossible to use a licensing violation as a path to licensing. This puts all the prior participants, that were directed by the Board to undertake this licensing violation, in a position to loose their license to practice, due to this trickery by the Lingle Administration.

My guess is that this misdirection was the intent of the Lingle Administration as she continues her political agenda expressed by her prior veto.

As you know, The licensing laws in the State of Hawaii and elsewhere are designed to assure minimal level competency for the practice of the regulated profession including health care.

The State relies upon accredited schools and valid and reliable professional examinations to predict minimal level competency. This is a **reasonable approximation** to predict minimal level competency to protect and promote the public health.

However, this predictor is only an approximation of competency.

This approximation is backed up by performance in the real world. Real World performance is the real world test for competency.

Actual real world performance is the most effective measure of competency and surpasses the approximation of minimal level competency by the pre-licensing requirements of accredited professional schools and valid and reliable professional examinations.

Since all Naturopathic Physicians licensed in the State have met era appropriate criteria for licensing including the era appropriate professional schools and era appropriate professional examinations all of which have included both education and testing in parenteral therapies including injection; and,

Since all Naturopathic Physicians in the State have demonstrated an error free and complaint free practice of parenteral therapy;

This real world demonstration of professional competency can not and should not be ignored.

The policy and practice of the Lingle Administration has caused an interruption of ongoing patient care due to log jams in the rule making process.

This interruption of ongoing patient care presents a risk to the patient's health, wellness, life and limb.

This interruption of ongoing patient care is a violation of Article IX of the Hawaii State Constitution requiring the State "to protect and promote the public health".

Recognizing the real world validation of minimal level of competency for parenteral therapy performed complaint free and error free in the State, the State should use the "grandfathering" principles currently accepted in Health Care regulations of the State to immediately correct this constitutional violation and risk to the public health.

This would correct the interruption of ongoing patient care an unintended consequence of Act 22.

Unfortunately, a mere resolution is not the proper vehicle for this Legislative action which requires the vehicle of a bill such as HB2312 HD2, ripe and fitting for an SD1, as referenced above. I believe that the House would agree to this in Conference.

I would again suggest that Senator Ige's language concerning the Legislative presumption that the Board should rely upon the accredited schools as other boards have done, that this be included as a "Whereas" as this would give guidance and direction to an otherwise confused, upside down, critical situation.

If possible I would also like to suggest that specific language to this effect be also included in the "Be it Resolved.

BE IT RESOLVED by the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, the House of Representatives concurring, that the Board of Naturopathic Medicine is urged to adopt administrative rules accepting the accredited schools of naturopathic medicine as the education and training requirements in accord with Act 22, Special Session Laws of Hawaii 2009, to allow the use of parenteral therapy by naturopathic physicians as the [~~that include~~] education and training requirements;

Again I strongly urge the Senate to quickly move SCR 123 and SR 53 as well as use HB2312 HD2 as a vehicle to delete the rule making mandate of Act 22.

Delete everything in HB2312 HD2 report out as an SD1 with

"§455-6 Powers and authority of the board. In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- (2) Adopt, amend, or repeal rules in accordance with chapter 91 to carry out the purposes of this chapter; provided that

all rules shall be approved by the governor and the director of commerce and consumer affairs; and provided further that the rules:

- (A) May forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;

- (B) Shall establish standards of practice, care, and ethics; and
- (C) Shall establish the education and training requirements [~~for parenteral therapy and the standards to administer parenteral therapy,~~] and establish examination standards and require the passage of an examination on minor office procedures, which standards and requirements shall take effect after December 31, 2009;

or better yet to cure many problems easily

"§455-6 Powers and authority of the board. In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- (2) Adopt, amend, or repeal rules in accordance with chapter 91 to carry out the purposes of this chapter; [~~provided that all rules shall be approved by the governor and the director of commerce and consumer affairs; and provided further that the rules:~~ (as this is redundant and unnecessary)

- ~~(A) May forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;~~(as this is redundant and unnecessary)
- ~~(B) Shall establish standards of practice, care, and ethics; and~~ (great for the Plaintiff attorneys and the generation of malpractice suits)
- ~~(C) Shall establish the education and training requirements for parenteral therapy and the standards to administer parenteral therapy, and establish examination standards and require the passage of an examination on minor office procedures, which standards and requirements shall take effect after December 31, 2009;]~~

(this is not only redundant and unnecessary it is the deliberate sabotage of the enactment of the Law)

Boards make rules without needing any additional mandate. Requiring a mandate is a premeditated method of blocking the law endangering the public health, violating human rights and the Constitution of the State of Hawaii and the United States of America. Removing the mandate cures the sabotage will continuing to permit the usual and customary rule making activity of the Board.

Thank you, we need to get the job done this year ASAP

Respectfully, Dr. Myron Berney, ND L Ac <http://naturalcancerwellness.com/default.aspx>

**PRESENTATION OF THE
BOARD OF NATUROPATHIC MEDICINE**

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH STATE LEGISLATURE
Regular Session of 2010

Wednesday, March 17, 2010
2:45 p.m.

**TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 123/SENATE
RESOLUTION NO. 53 – URGING THE BOARD OF NATUROPATHIC MEDICINE TO
MAKE RULES CONSISTENT WITH ACT 222, SPECIAL SESSION LAWS OF HAWAII
2009, TO ALLOW NATUROPATHIC PHYSICIANS TO PERFORM PARENTERAL
THERAPY.**

TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Dr. Kevin Gibson, member of the Board of Naturopathic Medicine ("Board"). The Board appreciates the opportunity to present testimony on Senate Concurrent Resolution No. 123 and Senate Resolution No. 53, Urging the Board of Naturopathic Medicine to make rules consistent with Act 222, Special Session Laws of Hawaii 2009, to allow naturopathic physicians to perform parenteral therapy (i.e., injections).

We believe that these resolutions are unnecessary because since August 2009, the Board has been actively developing and drafting the education and training requirements for parenteral therapy and the standards for parenteral therapy as required by Act 22, Special Session Laws of Hawaii 2009 ("Act 22"). (Please note that the title of both resolutions inadvertently cite Act 222 rather than Act 22).

In addition, it appears that the resolutions are urging the Board to adopt administrative rules that are not consistent with the Legislature's intent or Act 22. For

example, the eighth "Whereas" paragraph of both resolutions state that the effective prohibition on the use of parenteral therapy by naturopathic physicians that currently exists is in contradiction to the intent of the Legislature in passing Act 22. We believe that this paragraph is not consistent with the Legislature's intent and Act 22 for the following reasons:

- (1) Standing Committee Report No. 1593 (2009 session) states that Senate Bill No. 420, S.D. 2, H.D.1 was amended to prohibit naturopathic physicians from using injection treatments until the Board adopts pertinent rules; and
- (2) Hawaii Revised Statutes sections 455-1 and 455-6 clearly state that naturopathic physicians cannot use parenteral therapy until the Board adopts administrative rules that establish the education and training requirements for parenteral therapy and the standards to administer parenteral therapy.

Therefore, because the Board is currently in the process of drafting administrative rules in accordance with Act 22, Senate Concurrent Resolution No. 123 and Senate Resolution No. 53 are unnecessary. Thank you for the opportunity to present testimony on this matter.