



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
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DATE: Wednesday, March 19, 2014
TIME: 2:10 PM
PLACE: Conference Room 325

TO:
COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair

FROM: Hawaii Medical Association
Dr. Walton Shim, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ron Kienitz, DO, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

RE: SB 2227

In this testimony, first, we would like to address SB2227, and then turn the committee's attention to what we respectfully suggest are problematic changes that were made during second and third hearings for the companion measure, HB2052 and address concerns we now have subsequently.

We strongly support SB2227, as written, as it maintains the statutory requirements to allow POLST to continue to be effective in the State of Hawaii, while also expanding access by allowing APRNs to participate in signatory authority. When it comes to avoiding unwanted medical treatments at the end of life, Physician Orders for Life Sustaining Treatments (POLST) have been shown to be nearly 100% effective in preventing unwanted treatments while other directives, such as living wills, have not been shown effective. POLST have never been shown to be a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illness. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. Not permitting Advanced Practice Nurses to sign POLST forms means many patients in need cannot complete them, leaving them vulnerable

Officers

*President - Walton Shim, MD President-Elect – Robert Sloan, MD
Secretary - Thomas Kosasa, MD Immediate Past President – Stephen Kemble, MD
Treasurer – Brandon Lee, MD Executive Director – Christopher Flanders, DO*

to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

Turning the committee's attention now to HB2052, HD2, we would like to take this opportunity to address substantive changes made to HB2052 HD2, by the House Judiciary committee, in response to two testimonies which raised mirroring concerns.

➤ **Delete Section 6, requiring DOH to adopt a sample POLST "Form"**

1. **The POLST is an order for medical treatments.**

- a. Physician orders should not be legislated. Physician orders should be based upon best practices, and able to be changed within the professional community, best positioned to keep current.
- b. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. The Hawaii form has been modeled after national forms which has also been adopted by other states. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.
- c. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health.
- d. Rules making and mandatory form adoption will delay forward movement.

➤ **Restore Section 4 (3) (A): "Lacks Capacity"**

1. **Section 4 (3) (A) of HB 2052, HD2 deletes "Lacks capacity", which impedes decision making powers.**

- a. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order.
- b. We request that SB2227 retain the "lack capacity" provision to ensure the authority for ALL legally authorized representatives to make decisions as provided for in the Advance Directive Law (327E).

➤ **Address Concerns Raised in House Consumer Protection and House Judiciary Committees**

1. **Testimony from two individuals spoke to the “problematic areas with respect to the authority of ‘non-designated surrogates’ to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E.”**
 - a. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.
 - b. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.
 - c. Indeed, one individual stated this was ancillary to the [core] POLST discussion.
 - d. Currently, Chapter 327E-(g) allows for: *“A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.”*
 - e. By only allowing a designated decision maker(that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.
 - f. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: *“A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.”*
 - g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.
 - h. The concerted effort of the entire state’s leadership in hospice and palliative care continues in their efforts to promote advance directives and effective conversations about treatment choices at the end of life.

- i. Each health care provider must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.
- j. **Note:** POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal.

➤ **We understand the intent of those who ask for “safeguards” to be added into the POLST Order form**

1. We respectfully recommend that to modify POLST away from its original design does not fix the problems they have identified.
2. To strengthen language and powers of the so-called “non-designated surrogate” the legislature might consider amending 327E, HRS.
3. The way the POLST legislation is designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E, HRS is changed.

We respectfully request that the committee consider and advance the language in S.B. 2227 to ensure the continued effectiveness, as well as expanded access to POLST. We hope we have satisfactorily outlined our concerns on H.B. 2052, HD2. We welcome continued dialog with interested parties on re-examining Chapter 327E, HRS during the interim.

Thank you for the opportunity to provide testimony on this measure.



Wednesday – March 19, 2014 – 2:10pm
Conference Room 325

The House Committee on Consumer Protection and Commerce

To: Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Support**
SB 2227, HD 1 — Relating to Provider Orders for Life-Sustaining Treatment

The Healthcare Association of Hawaii (HAH) is a 116-member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for the opportunity to testify in support of SB 2227, HD 1, which promotes efficiency in advance care planning. SB 2227, HD 1 modernizes provider orders for life-sustaining treatment by changing references of "physician orders for life-sustaining treatment" in the Hawaii Revised Statutes to "provider orders for life-sustaining treatment," expanding signatory authority to include advanced practice registered nurses. HAH supports the intent and spirit of SB 2227, HD 1, which is to improve the quality of life for patients through expanded efficiency and consistency in advance care planning.

Thank you for the opportunity to testify in support of SB 2227, HD 1.



March 19, 2014

The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair

Committee on Consumer Protection and Commerce

Re: SB 2227, HD1 – Relating to Physician Orders for Life-Sustaining Treatment

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Rick Jackson and I am Chairperson of the Hawaii Association of Health Plans (“HAHP”) Public Policy Committee. HAHP is a non-profit organization consisting of nine (9) member organizations:

AlohaCare	MDX Hawai'i
Hawaii Medical Assurance Association	'Ohana Health Plan
HMSA	University Health Alliance
Hawaii-Western Management Group, Inc.	UnitedHealthcare
Kaiser Permanente	

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to provide testimony in support to SB 2227, HD1 which would expand access to physician orders for life-sustaining treatment to advanced practice registered nurses; and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. We believe that this type of expansion will be highly beneficial to all the people of Hawai'i, especially to those living in rural communities. HAHP also believes that this Bill will further encourage communication between healthcare providers and patients to make more informed decisions, which is crucial to positive health outcomes.

Thank you for the opportunity to provide testimony.

Sincerely,

Rick Jackson
Chair, Public Policy Committee



S.B. 2227, H.D.1
RELATING TO PROVIDER ORDERS FOR LIFE SUSTAINING TREATMENT
House Committee on Consumer Protection and Commerce
March 19, 2014; 2:10 p.m.

Thank you for the opportunity to provide testimony in **strong support** of SB2227, HD1. We are Cherylee Chang, M.D., Director of the Stroke Center and Medical Director of the Neuroscience Institute/Neurocritical Care and Daniel Fischberg, MD, PhD, FAAHPM, Medical Director for the largest hospital-based palliative care program at The Queen's Medical Center and Vice-Chair of the Board of Kokua Mau, Hawaii's hospice and palliative care organization. In this testimony, first, we would like to address our support for SB2227, HD1 and then turn the committee's attention to what we respectfully suggest are problematic changes that were made during second and third hearings for the companion measure, HB2052 and address concerns we now have subsequently.

We strongly support SB2227, HD1 as it allows POLST to continue to be effective in the State of Hawaii, while also expanding access by allowing APRNs to participate in signatory authority. When it comes to avoiding unwanted medical treatments at the end of life, Physician Orders for Life Sustaining Treatments (POLST) have been shown to be nearly 100% effective in preventing unwanted treatments while other directives, such as living wills, have not been shown effective. POLST have never been shown to be a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illness. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. Not permitting Advanced Practice Nurses to sign POLST forms means many patients in need cannot complete them, leaving them vulnerable to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

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of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.”

- e. By only allowing a designated decision maker(that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.
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- g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.
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- i. Each health care provider must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.
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We respectfully request that the committee consider and advance the language in S.B. 2227, HD1 to ensure the continued effectiveness, as well as expanded access to POLST. We hope we have satisfactorily outlined our concerns on H.B. 2052, HD2. We welcome continued dialog with interested parties on re-examining Chapter 327E, HRS during the interim.

Thank you for the opportunity to provide testimony on this measure.



**Written Testimony Presented Before the
House Committee on Consumer Protection and Commerce
March 19 , 2013 2:10 p.m.
Conference Room 325**

**by
Kathy Yokouchi, Policy Analyst
Hawaii State Center for Nursing
University of Hawai'i at Manoa**

SB 2227, SD1, HD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair McKelvey, Vice Chair Kawakami, and members of the Senate Committee on Consumer Protection and Commerce, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1, HD1.

The Hawaii State Center for Nursing supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

SB 2227, SD1, HD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized¹ APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians².

¹ **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.

However, HSCN strongly opposes the effective date of 2050 and recommends that “ This Act shall take effect on July 1, 2050” be restored.

Therefore, HSCN respectfully requests passage of this measure with the effective date restored. HSCN appreciates the opportunity to testify.

Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing’s Model Nurse Practice Act and Model Nursing Administrative Rules.

Act 110, SLH 2011 required each hospital in the State licensed under Hawai`i Revised Statutes (HRS), § 321-14.5 is required to allow¹ APRNs ¹ and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN’s specialty. Able to prescribe drugs without working relationship agreement with a licensed physician.

² A 2010 study by the John A. Burns School of Medicine reported a current shortage of 600 physicians (more than 20% of the current supply) and an impending shortage of 1,600 by 2020. "Because physician shortages of the magnitude described will directly impact the health and well-being of virtually all residents of Hawai`i, something must be done. Unfortunately, there is no easy fix to the problem. The problem is most acute on the island of Hawai`i, but people everywhere, including urban O`ahu are also starting to feel the effects in a variety of specialties... If Hawai`i’s utilization of physician services were to match the average mainland usage, our current demand for physicians would be about 3,500. If Hawai`i’s population grows as anticipated without change being made in the system of care or current utilization patterns, our state will need over 4,000 doctors by the year 2020. It is expected that even with active recruitment Hawai`i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai`i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we’ll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project*. Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).



HAWAII STATE CENTER FOR NURSING

Connecting Nurses. Transforming Healthcare.

**Written Testimony Presented Before the
House Committee on Consumer Protection and Commerce
March 19, 2013 2:10 p.m.
Conference Room 325**

by

**Dale Allison, PhD, WHNP-BC, FNP, APRN-Rx, FAAN
Member, HSCN Advisory Board
Hawaii State Center for Nursing
University of Hawai'i at Manoa**

SB 2227, SD1, HD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair McKelvey, Vice Chair Kawakami, and members of the Senate Committee on Consumer Protection and Commerce, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227, SD1, HD1.

The Hawaii State Center for Nursing supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i).

SB 2227, SD1, HD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized ¹ APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians ².

¹ **Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.

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Legislative Committee

Wailua Brandman, Chair
Amy Vasconcellos, Vice Chair
Beverly Laurongaboy Inocencio
Mandy Ki'aha
Sondra Leiggi
Danielle Naahielua
Moani Vertido
Cynthia Cadwell, Ex-Officio



Written Testimony Presented Before the
House Committee on Consumer Protection & Commerce
March 19, 2014 2:10 pm

SB 2227 HD1 RELATING TO PROVIDER ORDERS FOR LIFE SUSTAINING
TREATMENT

Chair McKelvey, Vice Chair Kawakami, and members of the House Committee on Consumer Protection & Commerce, thank you for this opportunity to provide testimony in **STRONG SUPPORT** of this bill, SB 2227, HD1.

The measure supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient.

Following the barrier-breaking legislation passed between 2009 and 2011, APRNs are able to function independently as primary care providers¹. Since that time, countless individuals living in the State of Hawaii have selected an APRN as their primary care provider; this is especially true in medically underserved and rural areas. However, these same individuals would be denied access to POLST with their preferred provided as a result of the current legislative language in place. HAPN strongly supports the passage of SB 2227, HD 1, but respectfully requests that the effective date on the legislation fall within the 2014 calendar year.

Thank you for the opportunity to testify.

Amy Vasconcellos, Vice Chair
Legislative Committee
Hawaii Association of Professional Nurses

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Written Testimony Presented Before the
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday March 19, 2014 2:10 p.m.

by

Lenora Lorenzo DNP, APRN, FAANP
Family, Geriatrics and Diabetes Nurse Practitioner
Region 9 Director, American Association of Nurse Practitioners

SB 2227 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT.

Chair McKelvey, Vice Chair Kawakami and members of the House Committee On Consumer Protection & Commerce, thank you for this opportunity to provide testimony in strong support of this bill SB 2227 .

The American Association of Nurse Practitioners and I as a practicing APRN supports increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i).

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Therefore, the American Association of Nurse Practitioners and I as a practicing APRN respectfully requests passage of this measure. We appreciate your continuing support of nursing and education in Hawai'i. Thank you for the opportunity to testify.

doctors by the year 2020. It is expected that even with active recruitment Hawai'i will probably suffer a net loss of approximately 50 physicians every year in the face of dramatically rising demand. If the delivery system remains the same as today, many Hawai'i residents will not have timely access to care. The indigent and elderly will feel it first. As the shortage deepens, we'll all experience the effects". The ten top solutions identified by the working groups to be addressed most urgently include the use of non-physician clinicians (*Report to the 2011 Hawaii State Legislature: Report on Findings from the Hawaii Physician Workforce Assessment Project*. Withy, K. and Sakamoto, D.T. John A. Burns School of Medicine, December, 2010).



AONE Hawaii

AONE Hawaii
c/o PO Box 2774
Honolulu, Hawaii 96803



THE AMERICAN ORGANIZATION OF NURSE EXECUTIVES, **HAWAII CHAPTER**

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Wednesday — March 19, 2014 — 2:10pm
Conference Room 325

The Committee on Consumer Protection and Commerce

To: Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

Re: Testimony in Support
SB 2227 HD1 Relating to Provider Orders for Life Sustaining Treatment

The American Organization of Nurse Executives (AONE) is a national organization of nurses who design, facilitate, and manage care. AONE provides leadership, professional development, advocacy and research in its effort to advance the nursing profession and patient care, promotes nursing leadership excellence, and shapes health care public policy. AONE Hawaii is the local chapter of the American Organization of Nurse Executives. Founded in 1991, AONE Hawaii has approximately 100 members from various facilities and hospitals across the state.

This letter is written in support of SB 2227 HD1 which expands signatory authority to include advanced practice nurses (APRN). POLST is a holistic method of planning for end-of-life care and a specific set of medical orders that ensure patient's wishes are honored. The ability for APRN's to complete a POLST directly with patients and family members will better address the needs of patients in Hawai'i, especially in areas where primary care is provided by APRN's. This will also support the patient's preferences for the uses of various medical interventions are honored by their health care team.

We ask for your help and support in passing SB 2227 HD1 from this committee. Thank you.



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Wednesday, March 19, 2014 – 2:10 pm
Conference Room 325

The House Committee on Consumer Protection & Commerce

To: Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

From: Michelle Cantillo, RN, Advance Care Planning Coordinator

Re: **SB 2227, HD 1 Relating to Provider Orders For Life Sustaining Treatment
Testimony in Strong Support**

My name is Michelle Cantillo, and I am the RN, Advance Care Planning Coordinator for Hawai'i Pacific Health (HPH). HPH is a not-for-profit health care system, and the state's largest health care provider and non-government employer. It is committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four hospitals, more than 50 outpatient clinics and service sites, and over 1,600 affiliated physicians. HPH's hospitals are Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital. The system's leading strategic initiatives include women's health, pediatric care, cardiovascular services, cancer care, and bone and joint services. HPH ranks among the top three percent of hospitals nationwide in the adoption of electronic health records, with system-wide implementation that allows its hospitals and physicians to offer integrated, coordinated care throughout the state.

I write in strong support of SB 2227 HD 1 which increases access to Physician Orders for Life Sustaining Treatments (POLST) by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" as well as expanding health care provider signatory authority to include advanced practice registered nurses.

We are aware that the House companion, HB 2052 HD2 was previously heard and passed. We wish to note that we prefer the Senate version as contained in SB 2227. SB 2227 maintains the statutory requirements to allow POLST to continue to be effective in the State of Hawaii, while also expanding access by allowing APRNs to participate in signatory authority.

HB 2052, HD2 is problematic as it deletes the phrase "Lacks capacity" on page 5, line 18 in Section 4(3)(A). This amendment is significant because it impedes decision making powers, and effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive to create a POLST order.

Also, HB 2051, HD2 contains a provision that requires the Department of Health (DOH) to adopt a sample provider orders for life-sustaining treatment form. Legislatively requiring the DOH to adopt a sample form is unnecessary. Hawaii has successfully achieved the voluntary universal adoption and use of the same POLST Order form throughout the state. The Hawaii form has



Affiliates of Hawai'i Pacific Health

been modeled after national forms which have been adopted by other states.

POLST have been shown to be nearly 100% effective in preventing unwanted treatments in contrast to other directives, such as living wills, which have not been shown to be effective. At HPH we found that only about 17% of the patients entering our facilities even have an advance directive. POLST have never been a barrier to people receiving the treatments that they do desire. Unfortunately, access to care continues to be an issue, particularly for those with advanced illnesses. Many patients that would wish to complete a POLST to avoid unwanted medical treatment are confined to their beds at home, in a nursing facility, or a hospice. Advanced practice nurses have been critical in providing needed medical care to these patients. The effect of not permitting Advanced Practice Nurses to sign POLST forms means many patients in need will be unable to complete them, leaving these patients vulnerable to unwanted, aggressive treatment, such as electric shocks to the chest or placement on an artificial respirator, at the end of life when most people would prefer to focus on their comfort and dignity.

We urge your Committee to pass this measure. Thank you for the opportunity to provide this testimony.

To: Committee on Consumer Protection and Commerce
Rep. Angus L. K. McKelvey, Chair
Rep. Derek S. K. Kawakami, Vice Chair

From: Kenneth Zeri, RN, MS, President, Hospice Hawaii

Date: March 19, 2014

Testimony in support of SB 2227
Related to Providers Orders for Life Sustaining Treatment.

A. SB 2227

1. Hospice Hawaii wholeheartedly supports the passage of SB 2227, as proposed.

SB 2227 accomplished three important goals:

- a. Expands the signatory capability in our current POLST to allow Advance Practice Registered Nurses (APRN) to sign a POLST order. Hawaii was one of the leading states in the nation to implement a statewide fully portable POLST system. However, shortly after implementation it became clear that individuals living in more rural communities, Veterans getting care inside the VA system and nursing home residents were more likely to be seen by an APRN than an MD. Nationwide, APRNs are being included in the rules and regulations to sign a POLST. This bill corrects that oversight and expands access to POLST.
- b. Re-names the form to "Provider" instead of "Physician."
- c. Corrects inconsistent language regarding who may sign on a patient's behalf, if that individual is unable.

2. This Bill DOES NOT:

- a. Change any language in the Advance Directive laws, (HRS 327E) in particular governing those who may become a so-called "non-designated" decision maker. Nor does this bill allow for the designation of a decision maker on the POLST form.

B. **The impact of HB 2052 HD 2**

1. I would like to take this opportunity to address substantive changes made to HB2052 HD2. Testimony from two individuals spoke to the "problematic areas with respect to the authority of 'non-designated surrogates' to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E."

- i. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.
- ii. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.

- iii. Indeed, one individual stated this was ancillary to the [core] POLST discussion.
- b. Currently, 327E-(g) allows for: “A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.”
- c. Therefore, only allowing a *designated* decision maker (that is one who was appointed in writing by the patient through an advance directive) to sign a POLST as defined in the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals who have not designated a representative will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.
- d. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: “A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.”
 - i. Each Hospital must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.
- e. *Note: POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal.*

2. We understand the intent of those who ask for “safeguards” to be added to the POLST Order form:

- a. However, I respectfully recommend that to modify POLST away from its original design does not fix the problems they have identified;
- b. To strengthen language and powers of the so-called “non-designated surrogate” the legislature might consider amending 327E; and,
- c. The way the POLST legislation is currently designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E is changed.
- d. The Senate is working on SCR 40 and SR 15: Establishing an Advance Health Care Directive Working Group to examine ways to increase the use of Advance Directives and report back next year.

B. Impact of Amendments to HB 2052 HD 2

1. Section 4 (1) (a) (3) (A): “Lacks Capacity”:

- a. Section 4 (1) (a) (3) (A) of HB 2052, HD2 deletes “Lacks capacity”, which impedes decision making powers.
 - i. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order. This is in conflict with current law and effectively disenfranchises them from all decisional capability, including resuscitation, aggressiveness of treatments, place of care, etc.

2. Section 6, requiring DOH to adopt a sample POLST “Form”:

- a. The POLST is an order for medical treatments.
 - i. Physician orders should not be legislated. Physician orders should be based upon best practices, and able to be changed within the professional community, who is best positioned to keep them current.
 - ii. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.
 - iii. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health. The DOH has stated it is in opposition to a mandated form adopted by them.
 - iv. Rules making and mandatory form adoption will delay forward movement.

Thank you very much for the opportunity to testify in support of SB 2227. I am available to answer questions at a later date through my office at 924-9255.

March 18, 2014

Dear Chair McKelvey and other members of the committee,

Thank you for the opportunity to speak to SB2227 which was heard in the House as HB2052.

I serve as the Executive Director of Kokua Mau, Hawaii’s Hospice and Palliative Care Organization which is the lead agency in Hawaii for POLST. Kokua Mau staffs the statewide multi-sectoral POLST Task Force and our website is the clearing house for information about POLST including the POLST form and other information for download. We have implemented education around the island providing education at facilities and for community groups. Additionally we answer questions by phone and email from individuals and professionals.

It is because of our very positive experiences with POLST around the state over the last 5 years that we have worked to expand the signing privileges for POLST to include APRNs. We believe that POLST is a crucial document for people facing seriously illness to insure that they get the right care at the right time in the right place and that their wishes are honored. We also believe POLST helps families make sure that loved ones are well cared for throughout their lives.

We feel that we should return to the original wording of the bill, that is the unamended SB2227 that you have before you. Unfortunately amendments were made in HB2052 HD2 that substantially change the intent of the legislation and we believe they should not be added.

There are two changes that I would like to address in my testimony.

1. Section 4 - The changes made in HD2 have taken away the ability of a non-patient designated surrogate decision maker to complete a POLST. This is a dramatic step that would deny many individuals from having the benefits of a POLST because they did not appoint a Healthcare Power of Attorney ahead of time. Although everyone over 18 is encouraged to complete an Advance Directive, appoint a Healthcare Power of Attorney, and discuss their wishes for end-of-life care with loved ones, most people do not. Some estimates are that 80% of people have not appointment an agent although much effort has been made in Hawaii to encourage people to make these important steps while they are still able. This means providers in hospitals and other facilities must follow the steps of the law as laid out in 327E-5 for appointing a surrogate when someone is no longer able to speak for themselves and needs a decision maker.

Testimony was made that there is not currently a system for designating this surrogate but that is not the case. There is a well-defined process that is currently being effectively used around the state (outlined in 327E-5).

A surrogate, according to 327E, is a person who is selected through agreement by all interested persons when the patient did not designate anyone. In the vast majority of the cases, family members and other people with an interest in and knowledge of the person are called together and through a facilitated process, surrogate decision makers are

determined. That decision maker is then asked to sign a legally binding form confirming that they are who they say they are, their relationship with the patient, and that they are willing to serve as the surrogate. This process is documented in the patient's medical record. Each facility has their own form but many use the sample form created by UHELP at the University of Hawaii Law School and run by Prof. James Pietsch.

I have attached a copy of the form used by Maui Memorial Medical Center as well as their explanation of Surrogate Decision Making as an example.

If there are issues with the way that non-designated surrogates are appointed or documented in 327E-5, then the legislature could take up that issue at a future time. The expansion of POLST signing privileges should not be the vehicle for changing 327E.

2. Creation of a sample form as proposed in Section 6 of HD2. We view this as an unnecessary step and one that will add extra levels of bureaucracy to a system that is working well. In Hawaii there is only one POLST form which all facilities have voluntarily agreed to use. It was created by the POLST Task Force in 2009, which includes the Department of Health. The form follows formats used in other states and endorsed by the National POLST committee.

We feel that our current system of voluntary collaboration between key stakeholders has a very positive track record and we do not believe that the proposed changes will improve the situation but would in fact slow down the process.

Additionally we feel that physician orders should not be legislated. Physician orders should be based upon best practices and able to be changed within the professional community. This is the best way for the forms to keep current.

There were additional language changes in the amendment that we agree with. These are to use the term "legally authorized representative" and to clarify the language about healthcare power of attorney. (These were changes suggested by Professor Jim Pietsch.)

In the past I have testified about the importance of POLST and stand on my testimony about the importance of the expansion of signing privileges to APRNs to remove bottlenecks and increase access to POLST.

As the lead agency for POLST, we have gotten a lot of positive feedback about POLST which is why we have initiated this legislation to expand signing privileges. POLST is working well and therefore we need more access to POLST not less. I welcome the chance to answer any questions about POLST or the other issues raised in this process.

Sincerely,

Jeannette G. Kojane, MPH
Executive Director

Example from Maui Memorial Medical Center
Written Declaration of Surrogate

I, _____ declare myself surrogate

For _____ due to the following

reasons:

A. Surrogate Appointment (check one)

- According to the physician, I have been designated by the patient to be his/her surrogate decision maker
- I am a surrogate decision maker appointed by consensus of interested persons

B. Interested Persons

I am an interested person based on my relationship to the patient as: (check one)

- spouse, not legally separated or estranged
- reciprocal beneficiary
- adult child
- parent
- adult sibling
- adult grandchild
- an adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

C. Additional Facts or Circumstances

The following are additional facts or circumstances as to why I claim to be a surrogate decision maker:

Signature of Surrogate Decision Maker

Date

Print Name of Surrogate Decision Maker -- Contact Phone Numbers: Residence / Business / Cell

Lack of Capacity Determination for Surrogate Decision Making

As the primary physician or designee who has undertaken primary responsibility, I certify that _____ (patient's name) **DOES NOT** have the ability to understand the significant benefits, burdens, risks, and alternatives to proposed health care and **DOES NOT** have the ability to make and communicate a health care decision.

Signature of Primary Physician or Designee

Date

Print Name of Primary Physician or Designee

*Terminology of patient used within the context of this form is inclusive of residents within a Nursing Facility.

**Certification for Withdrawal or Withholding of Artificial Nutrition and Hydration
for a Surrogate Appointed through Consensus
of Interested Persons**

Primary Physician

As primary physician or designee who has undertaken primary responsibility, I certify for _____ (patient's name) the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

Signature of Primary Physician

Date

Name of Primary Physician (print)

Independent Physician

As an independent physician, I certify that for _____ (patient's name) the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

Signature of Independent Physician

Date

Name of Independent Physician (print)

*Terminology of patient used within the context of this form is inclusive of residents within a Nursing Facility.

Example from Maui Memorial Medical Center

INFORMATION ABOUT SURROGATE DECISION MAKING

The following information is provided to help you better understand what a surrogate decision maker is, how he/she is appointed, and what is the scope of their responsibility.

Background Information

- The Uniform Health Care Decisions Act (Modified) was signed into law in July 1999 and addresses the appointment of a surrogate decision-maker for health care decisions. The law also changed and consolidated most of the advance directive laws into one law.
- Prior to the passage of this law, there was no law about surrogate decision making except as a trial project in the nursing facilities. In other settings, surrogate decision making was not provided for under the law even though it was usually accepted as community practice.
- This law applies to all settings, for example inpatients, outpatients, and residents in nursing facilities (e.g. – ICF/SNF). The use of the word patient in this handout is intended to include all of these populations.

Definitions

Agent: Someone designated through a durable power of attorney for health care decisions.

Capacity: An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

Guardian: Someone appointed by a court to make decisions, either for the person or property or both.

Interested persons: The patient's spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient's personal values.

Surrogate: An individual, other than a patient's guardian or agent, designated to make health care decisions for the patient. Under the Uniform Health Care Decisions Act, there are two types of surrogates: one that is designated by the patient and another who is selected through agreement by all interested persons when the patient did not designate anyone.

What is the process by which a surrogate is appointed?

- a. The patient's physician certifies that a patient lacks capacity.
- b. In the absence of a guardian or agent, a surrogate decision-maker can be appointed.
- c. A patient with capacity can designate an individual to be a surrogate by personally informing the physician. The physician documents the patient's designated surrogate in the medical record.
- d. In the absence of a patient designated surrogate, the physician locates "interested persons" who may select a surrogate through consensus (or, if consensus cannot be reached, any individual may petition for legal guardianship).
- e. Both designated and "consensus" (or "non-designated") surrogates must provide the physician with signed declaration stating the facts and circumstances through which they were appointed as surrogate.
- f. The physician documents the selection of the surrogate in the medical record and provides a copy of the written claim for the medical record.

Is there any limitation on the type of decisions a surrogate can make?

The scope of decisions that a surrogate can make depends on how the surrogate was appointed. A surrogate that was designated by the patient may make health care decisions that the patient would normally make on their behalf. A surrogate who has been designated by consensus of interested persons can make health care decisions that the patient would normally make, however, a decision to withdraw or withhold nutrition and hydration requires that the primary physician and a second independent physician certify in the patient's medical record that the provision or continuation of artificial nutrition and hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

What should a surrogate consider when making decisions?

A surrogate's decision should be based on what the patient would have wanted. Many times it is based on what the patient expressed to the surrogate in the past, the patient's beliefs and what the patient felt was important. Sometimes the patient gave very explicit instructions to the surrogate and the surrogate was selected based on the patient's belief that this individual was the best choice to carry forth their wishes. Unfortunately, we cannot always predict the future or all situations that will come up. In most situations, what is usually considered is based on the best interests of the patient.

"Best interests" means that the benefits to the patient resulting from a treatment outweigh the burdens to the patient resulting from that treatment and shall include:

- 1) the effect of the treatment on the physical, emotional, and cognitive function of the patient;
- 2) the degree of physical pain or discomfort caused to the patient by the treatment, or the withholding or withdrawal of the treatment;
- 3) the degree to which the patient's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a *severe* and continuing impairment;
- 4) the effect of treatment on the life expectancy of the patient;
- 5) the prognosis of the patient recovery, with and without treatment;
- 6) the risks, side effects, and benefits of the treatment or the withholding of the treatment; and
- 7) the religious beliefs and basic values of the patient receiving treatment, to the extent that these may assist the surrogate decision maker in determining benefits and burdens.

What if a consensus cannot be reached or someone disagrees with the decisions of the surrogate?

Any of the interested persons may seek guardianship, which is a judicial process. A judge after hearing justifying information from the petitioning party and any objects by the conflicting parties will decide who will become the patient's legal guardian.

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 18, 2014 9:13 AM
To: CPCtestimony
Cc: geesey@hawaii.edu
Subject: Submitted testimony for SB2227 on Mar 19, 2014 14:10PM

SB2227

Submitted on: 3/18/2014

Testimony for CPC on Mar 19, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Yvonne Geesey	Individual	Support	No

Comments: Aloha Committee Members; please support modernizing POLST to authorizing APRN providers to sign off on these orders. mahalo, Yvonne Geesey JD, MSN Advanced Practice Registered Nurse

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 18, 2014 9:15 AM
To: CPCtestimony
Cc: mamaupin@hotmail.com
Subject: *Submitted testimony for SB2227 on Mar 19, 2014 14:10PM*

SB2227

Submitted on: 3/18/2014

Testimony for CPC on Mar 19, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Maupin	Individual	Support	No

Comments:

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Kelley Withy, MD, PhD
571 Kaimalino St.
Kailua, HI 96734

Written Testimony in Support of Senate Bill 2227

I am writing to offer my strongest support for SB2227. As President of the Hawaii State Rural Health Association, Director of the Area Health Education Center and a physician workforce researcher, I would like to take the opportunity to thank you for working toward allowing individuals to make their wishes about their healthcare known. Being a physician, I have seen both the miracles and the mishaps of medicine. End of life care can fall into both of these categories. Many times our medical advancements can help save lives, but sometimes it can prolong pain and suffering. Personally, I have completed a living will and clarified my wishes in the case that I am too incapacitated to express them at the time. But most people don't know how to do this. In addition, if the paperwork requires a physician cosignature, we have a bottleneck, because there just aren't enough physicians in Hawaii. My research has shown that Hawaii has 700 fewer physicians than a comparable population on the mainland US. The shortage is most severe in rural areas such as Hawaii Island. I believe that every individual has the right to decide how s/he will be treated when it comes to intubation, feeding tubes, cardiac defibrillation. SB2227 will help increase the number of people who have provider orders for life-sustaining treatment in place. This will increase the chance that the wishes of individuals are met, as well as decrease medical expenditures on undesired lifesaving procedures. Thank you for your attention to this matter and please keep up the good work!

Kelley Withy, MD, PhD

To: Senate Consumer Protection Committee
Chair; Rosalyn Baker, Vice Chair; Brian Taniguchi
Members Clarence Nishikawa, Glenn Wakai

From: Valisa Saunders MN, APRN, GNP-BC; Geriatric Nurse Practitioner

Hearing Date: March 19, 2014 2:10pm Rm 325

Testifying: IN **SUPPORT** of HB2227 HD1

Testimony in support of SB 2227
Related to Providers Orders for Life Sustaining Treatment

-

1. I am a practicing Geriatric Nurse Practitioner with 30 years of experience in the role in Hawaii and I strongly support the passage of SB 2227, as proposed. SB 2227 accomplished three important goals:
 - a. Expands the signatory capability in our current POLST to allow Advance Practice Registered Nurses (APRN) to sign a POLST order. Hawaii was one of the leading states in the nation to implement a statewide fully portable POLST system. However, APRNs, that spend a great deal of time on these issues have difficulty getting forms signed by all the appropriate parties, therefore delaying implementation and I, personally, have seen forms lost in the shuffle. This increases provider time that needs to be spent on the process. I had been addressing these issues with my clients for many years prior to our POLST legislation, but the POLST did improve the ability of the Emergency Medical Services (EMS) to implement the plan of care desired by the patient and/or family/legal representative, once signed.
 - b. Nationwide, APRNs are being included in the rules and regulations to sign a POLST. This bill corrects that oversight and expands access to POLST. I have also spent a good part of my career doing outpatient work with physicians, but still ran into many problems of getting POLST forms signed by a physician that knew the patient and understood all the nuances of what they were signing without doing their own assessment. I completed many of these forms for patients living at home, patients in our home visit program and patients attending adult day health programs that needed these documents done in a timely way. There were times I was seeing patients at home on the North Shore and the family opted for comfort care at home and sometimes Hospice, but I couldn't leave them equipped with this important too.
 - c. Re-names the form to "Provider" instead of "Physician."
 - d. Corrects inconsistent language regarding who may sign on a patient's behalf, if that individual is unable.
2. This Bill DOES NOT:

- a. Change any language in the Advance Directive laws, (HRS 327E) in particular governing those who may become a so-called “non-designated” decision maker. Nor does this bill allow for the designation of a decision maker on the POLST form.

HB 2052 HD 2

1. I would like to take this opportunity to address substantive changes made to HB2052 HD2, by the House Judiciary committee, in response to two testimonies which raised similar concerns. Testimony from two individuals spoke to the “problematic areas with respect to the authority of ‘non-designated surrogates’ to make certain health care decisions on behalf of incapacitated patients on the POLST form and specifically decisions to withhold or withdraw artificial hydration and nutrition as provided in Chapter 327E.”
 - a. Both individuals testifying fully support POLST, and the expansion of POLST to include APRN.
 - b. Both individuals indicate that the concern lies in Chapter 327E, not in the POLST form.
 - c. Indeed, one individual stated this was ancillary to the [core] POLST discussion.
 - d. Currently, 327E-(g) allows for: “A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.”
 - e. By only allowing a designated decision maker (that is one who was appointed in writing by the patient through an advance directive) to sign a POLST the amendment in HD2 effectively contradicts the existing law in 327E-5. Thus, those individuals will be disenfranchised from accessing POLST as a means of establishing a portable treatment plan consistent with the values and best interest of those legally authorized to represent them.
 - f. How is a non-designated surrogate decision maker appointed? Each hospital must follow the laws as established in 327E-5 for identifying the decision maker. In the event the patient has not designated one, the law allows for a group of interested persons to reach consensus and request that one individual be designated to serve in that role. Further, 327E-5(i) also mandates: “A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.”

- g. Most hospitals have been dealing with this issue for years, since the passage of 327E. We have examples of several hospital forms which require such statement under penalty of false swearing.
- h. The concerted effort of the entire state's leadership in hospice and palliative care continues in their efforts to promote advance directives and effective conversations about treatment choices at the end of life.
- i. Each Hospital must address their process for obtaining a representative to make decisions for the incapacitated patient who has not designated someone.
- j. *Note: POLST was not designed to be the form or tool that designated a decision maker. When POLST was created, we recognized that it was a complementary tool to the advance directives, and that the POLST orders were completed upon the clinical need of the patient. By contrast, an advance directive can be completed years in advance of a clinical need, and require 2 witnesses or notary to be legal.*

2. I understand the intent of those who ask for “safeguards” to be added to the POLST Order form:

- a. However, I respectfully recommend TO NOT modify POLST away from its original design which would not fix the problems they have identified;
- b. To strengthen language and powers of the so-called “non-designated surrogate” the legislature might consider amending 327E; and,
- c. The way the POLST legislation is designed is to be consistent with the Advance Directive law and not requiring amendment each time 327E is changed.
- d. I would also like to point out that even patients with designated powers of attorney for health care (DPOA HC), don't always have a POA that really understand their intent and providers have to navigate this reality every day. The NDS laws have been very helpful, if not perfect in designing more appropriate plans of care for patients lacking capacity to make complex medical decisions.

3. Restore Section 4 (3) (A): “Lacks Capacity”:

- a. Section 4 (3) (A) of HB 2052, HD2 deletes “Lacks capacity”, which impedes decision making powers.
 - i. The change in HB2052, HD2 effectively eliminates the authority of an individual who was not designated by the patient in an Advance Directive (under section 327E) to create a POLST order.
 - ii. I respectfully request that SB2227 retain the “lack capacity” provision to ensure the authority for ALL legally authorized representatives to make decisions as provided for in the Advance Directive Law (327E).

4. Delete Section 6, requiring DOH to adopt a sample POLST “Form”:

- a. The POLST is an order for medical treatments.

- i. **Physician/Provider orders should not be legislated.**
Physician/Provider orders should be based upon best practices, and able to be changed within the professional community, who is best positioned to keep them current.
- ii. Hawaii has successfully achieved the voluntary universal adoption of the same POLST Order form throughout the state. Grant funding and voluntary grass roots support has spread POLST to every island, hospital, nursing home, home care, hospice and most care homes.
- iii. The existing statute, 327K-4 allows for voluntary rules creation by the Department of Health. The DOH has stated it is in opposition to a mandated form adopted by them.
- iv. Rules making and mandatory form adoption will delay forward movement.

Thank you very much for considering these issues regarding SB2227 and the potential impact of HB2052 HD2 should SB 2227 be amended to mirror HD2. I am available to answer questions at a later date through my office at 924-9255.

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 18, 2014 10:51 AM
To: CPCtestimony
Cc: joann@nsautomation.com
Subject: Submitted testimony for SB2227 on Mar 19, 2014 14:10PM

SB2227

Submitted on: 3/18/2014

Testimony for CPC on Mar 19, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
JoAnn Lepke	Individual	Support	No

Comments: Please allow nurse practitioners to sign a POLST.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

**Written Testimony Presented Before the
Senate Committee on Health
March 18, 2014**

by

Mimi Harris, MS RN

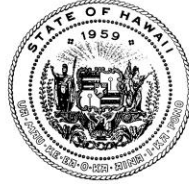
SB 2227 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair Josh Green, Vice Chair Rosalyn H. Baker, and members of the Senate Committee on Health, Thank-you for this opportunity to provide testimony in strong support of this bill, SB 2227.

I support increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their providers (physicians or APRNs). It makes sense that APRNs be provided the authority to participate and be recognized with signatory authority. This is in the best interests of our patients and community and increases the likelihood that the wishes of individuals about end of life care will be honored.

Therefore, I respectfully requests passage of this measure. I appreciate your continuing support of nursing and quality healthcare in Hawai'i. Thank you for the opportunity to testify.
Mimi Harris, MS, RN, NEA-BC

LATE



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

In reply, please refer to:
File:

House Committee on Consumer Protection & Commerce

SB 2227, HD1, Relating to Provider Orders for Life-Sustaining Treatment

**Testimony of Linda Rosen, M.D., M.P.H.
Director of Health**

Wednesday, March 19, 2014

1 **Department's Position:** The department SUPPORTS this bill WITH COMMENTS.
2 **Fiscal Implications:** The fiscal implications are undetermined.
3 **Purpose and Justification:** Following passage of the original POLST bill in 2009, the department
4 remained a voluntary and active participant along with local practicing physicians and clinical and
5 professional experts to help shape POLST and the current POLST form. The department supports the
6 intent of POLST and the aim of the current and companion bills to expand signatory authority to
7 advance practice nurses. The department also recognizes that there are differences between this
8 SB 2227, HD1, and its companion HB 2052; the department prefers the language in SB 2227, HD 1. If
9 the House Committee on Consumer Protection & Commerce is considering making changes to SB 2227,
10 HD 1, in favor of the changes made in HB 2052, please note the following: the department will defer to
11 legal and technical experts on language concerning the capacity of patients and other technical language
12 changes, and the department will oppose the requirement for the department to develop and adopt a
13 sample POLST form. Such a requirement would be unnecessary since a POLST form has already been
14 developed and adopted and it is recognized state-wide by 1st responders and healthcare professionals.
15 The form is used to write medical orders, and as with other medical orders forms should not be
16 regulated. The form was modeled after forms used in other parts of the country and the local physicians

1 and experts continually review the form for improvement based on national standards and as best
2 practices emerge through study and experience. Requiring the DOH or any other state agency to
3 develop and adopt a sample form would undermine the current process and be a disservice to the
4 community. It would require DOH to adopt administrative rules that would create an unintended burden
5 on the currently successful process without any measurable improvement or benefit to the public. This
6 process would create a *de facto* POLST form rather than a sample form and the department would then
7 become responsible to track national standards and best practices without the financial or professional
8 resources required for the job.

9 As a result, the Department of Health supports the current language of SB 2227, HD 1, and
10 respectfully requests that any requirement for the department to develop and adopt a sample POLST
11 form not be included.

12 Thank you for the opportunity to testify.

LATE

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LINDA ROSEN, MD, MPH
DIRECTOR OF HEALTH



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DIRECTOR

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EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
250 SOUTH HOTEL STREET, SUITE 406
HONOLULU, HAWAII 96813-2831

Committee on Consumer Protection and Commerce

**SB2227, HD1, RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING
TREATMENT**

Testimony of Wes Lum
Director, Executive Office on Aging
Attached Agency to the Department of Health

Wednesday, March 19, 2014; Conference Room 325

2:10 p.m.

EOA's Position: The Executive Office on Aging (EOA) supports this measure with the original wording of SB2227, with suggested technical amendments as specified below.

Purpose and Justification: EOA recommends the following amendment:

1. HRS subsections 327K-2(b) and (c) should also be amended to reflect the changes in terminology made in this bill, and
2. HRS subsection 327k-2(a)(3) should be amended to add the word "patient's" before legal representative in two places on page 5, line 15 and 18.

This measure increases access to POLST by updating references from "physicians orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout 327K, HRS, and also expands healthcare provider signatory authority to include advanced practice registered nurses (APRN). EOA would oppose language that requires DOH to adopt a sample POLST form

pursuant to Chapter 91, HRS, because Hawaii already has a voluntary universal POLST Orders Form that is currently used successfully throughout the state.

This measure also reflects the recommendation of the State Plan on Alzheimer's Disease and Related Dementias (ADRD) to realize the goal of enhancing care quality and efficiency. We believe that in order for Hawaii to achieve the vision of the best quality of life for those touched by dementia, it is imperative to achieve the highest quality of culturally competent care possible and a state infrastructure sensitive to the needs of people with ADRD and their care partners. Consumers and their families need to have all appropriate services and care to maximize quality of life, delivered in a coordinated way from early and accurate diagnosis to the end of life. POSLT is a holistic method of planning for end of life care and a specific set of medical orders that ensure that patients' wishes are honored. Therefore, expanding healthcare provider signatory authority to include APRNs will assist with a timely completion of a POLST for persons with dementia. Thank you for the opportunity to testify.



House Consumer Protection Committee Hearing Wednesday 3/19/14 SB2227 HD1
Regarding POLST Physician/Provider Order for Life Sustaining Treatment

Jackie Mishler RN BSN PCCN
Post Office Box 892
Kula, Hawaii 96790
561-8673

If someone is in the position of making life and death decisions and choices for a patient such as authorizing a Do Not Resuscitate order, stopping antibiotics, etc., that authorization should be clear and oversight should be possible. Right now that is not the case. This bill magnifies this weakness in **protecting** the incapacitated patient.

I am not able to change my work schedule to attend but would like to ask that CPC adopt the position taken by the House Judiciary in HB2052 HD 2 and not allow a non designated surrogate to fill out a POLST form.

If the Health Committee cannot take that position then I suggest they adopt the Senate Judiciary version and require the DOH to come up with a standard written declaration of surrogate form that conforms to section 327E-5 (i) Hawaii Revised Statutes which requires a supervising health-care provider to require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority. The inclusion of this language in a standard written declaration of surrogate form increases the accountability of surrogates in making life and death decisions for patients who lack decisional capacity to provide informed consent to or refuse medical treatments.

Thank you for this opportunity to testify. Please call me if you need further clarification or if I can answer any questions that may arise from this testimony.

LATE

Written Testimony Presented Before the
Senate Committee on Consumer Protection and Commerce
March 19, 2013 2:10 p.m.
Conference Rm 325
by

*Pualani Gandall Yamamoto
MSN, APRN-Rx, FNP-BC
American Association of Nurse Practitioners – Hawaii State Representative
808 / 282-6714 pyamamoto@hawaii.edu*

SB 2227 HD1 RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT

Chair McKelvey, Vice Chair Kawakami, and members of the Senate Committee on Consumer Protection and Commerce, thank you for this opportunity to provide testimony in strong support of this bill, SB 2227 HD1.

I support increasing access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; particularly, expanding health care provider signatory authority to include advanced practice registered nurses (APRNs); and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient. POLST is a tool to help ensure that patients make informed decisions and that their wishes are honored across health care settings. POLST requires a meaningful dialog between patients and their physicians or APRNs (especially in rural, medically underserved areas of Hawai'i.

SB 2227 HD1 is consistent with barrier-breaking legislation made between 2009-2011, when the Legislature authorized¹ APRNs to function independently as primary care providers to help relieve the oncoming shortage of primary care physicians².

¹**Act 169, SLH 2009** required insurers/HMOs/benefit societies to recognize APRNs as PCPs; authorized APRNs to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients including workers' compensation, verification documents, verification and evaluation forms the DHS and DOE, verification and authorization forms of the DOH and physical examination forms.

Act 57, SLH 2010 the adoption of the National Council of State Boards of Nursing's Model Nurse Practice Act and Model Nursing Administrative Rules.

Act 110, SLH 2011 required each hospital in the State licensed under Hawai'i Revised Statutes (HRS), § 321-14.5 is required to allow¹ APRNs¹ and qualified APRNs granted prescriptive authority to practice within the full scope of practice including as a primary care provider. APRNs granted prescriptive authority to prescribe controlled drugs (Schedule II-V) within formulary appropriate to the APRN's specialty. Able to prescribe drugs without working relationship agreement with a licensed physician.

However, I strongly oppose the effective date of 2050 and recommends that “ This Act shall take effect immediately”. Therefore, I respectfully request passage of this measure with an immediate effective date implemented. I appreciate your continuing support of nursing and commerce in Hawai'i. Thank you for the opportunity to testify.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 19, 2014

The Honorable Angus L. K. McKelvey, Chair
The Honorable Derek S. K. Kawakami Vice Chair
House Committee on Consumer Protection and Commerce

Re: SB 2227, HD1 – Relating to Provider Orders for Life-Sustaining Treatment

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in strong support of SB 2227, HD1, which increases access to physician orders for life-sustaining treatment (POLST).

It has long been HMSA's mission to improve the health and well-being of our members, and for all the people of Hawaii. A POLST form serves as a portable and recognized vehicle for documenting an individuals' end-of-life care and medical orders. We acknowledge the importance of communication between patients and health care providers.

Updating the references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; will allow advanced practice registered nurses (APRN) to also complete a POLST directly with patients and families. We believe that expanding access to APRNs to complete POLST forms will be highly beneficial for individuals living in rural areas or the neighbor-islands.

We strongly support SB 2227, HD1, and believe that increasing access to POLST will further improve the health and well-being for all the people of Hawai'i.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink that reads "Mark K. Oto".

Mark K. Oto
Director
Government Relations