

SB726

Measure Title: RELATING TO HEALTH CARE PRACTITIONERS.

Report Title: Health Care Practitioners; Truth in Advertising Campaign; American Medical Association; Doctors

Description: Requires health care providers to conspicuously post and communicate their specific type of licensure in their offices, communicate that information to patients in their practices, and include that information in their advertising. Imposes penalties for licensed health care providers who include deceptive or misleading information about their qualifications in their advertising, or misrepresent their qualifications to patients.

Companion:

Package: None

Current Referral: CPH

Introducer(s): GREEN, Keith-Agaran



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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

WEDNESDAY, FEBRUARY 22, 2017
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 726
RELATING TO HEALTH CARE PRACTITIONERS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 726, Relating to Health Care Practitioners. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers enforcement-related comments on this bill.

Senate Bill No. 726 creates a new Part in Chapter 436B, Hawaii Revised Statutes ("HRS") to establish advertising requirements for health care practitioners, including conspicuously posting the practitioner's specific licensure through a photo

identification name tag worn during all interactions with patients and in a display in the practitioner's office. The bill also provides for penalties for violations of the new Part.

Senate Bill No. 726 defines "health care practitioner" to include sixteen professions and vocations under the Department's jurisdiction. However, the bill's definition also includes "[a]ny other person who provides health care services subject to certification or licensure" at page 3, lines 3-4. This provision is ambiguous, particularly without a definition of "health care services" in the bill. Specific enumeration of the health care practitioners subject to the bill's advertising requirements would assist RICO in its enforcement role.

RICO believes the specific advertising requirements in §436B-B require additional specificity to help avoid a lack of clarity in the enforcement process. For example, the bill requires health care practitioners to wear an identification name tag with a "recent" photograph and indicating the type of license held by the practitioners, where the openness of the term "recent" would likely lead to enforcement challenges. It is also unclear what nomenclature the practitioner must use in communicating the practitioner's specific licensure. RICO believes the bill does not specify with enough clarification for practitioners to be able to comply with its requirements.

Senate Bill No. 726 at page 4, line 4, also requires the display of a sign of "sufficient" size in the practitioner's office, identifying the type of license held by the practitioner. Again, it is unclear what would constitute "sufficient" and RICO suggests that the bill provide specific dimensions for such a display.

The bill further exempts practitioners working in "non-patient care settings" from the advertising requirements in the bill at page 4, lines 16-17. However, Senate Bill No. 726 does not define "non-patient care settings", such that it would be difficult for RICO to determine whether a practitioner is exempt from the bill's requirements.

Section 436B-C of the bill prohibits the aiding and abetting of the unlicensed practice of health care. This section may be unnecessary because aiding and abetting prohibitions are already contained in §436B-19, HRS, and in individual licensing chapters.

Section 436B-D at page 5, lines 9-13, states that any health care practitioner who violates section 436B-B or 436B-C shall be guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions for the respective practitioner. Because not every licensing chapter governing health care practitioners specifically penalizes "unprofessional conduct",¹ RICO suggests that subsection (a) be amended to state that violations of the new sections constitute violations of Chapter 436B, HRS, with a corresponding amendment to §436B-19, HRS.

Finally, Senate Bill No. 726 requires the public reporting of sanctions, fines, or other disciplinary actions imposed under §436B-D in a "journal of official record" at page 6, lines 3-5. Because RICO routinely reports disciplinary actions online in the form of a Complaint History Report, we believe this provision is unnecessary.

¹ Various licensing chapters prohibit "professional misconduct", "professional misbehavior", or "any unprofessional practice".

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Thank you for the opportunity to testify on Senate Bill No. 726. I will be happy to answer any questions the Committee may have.



Hawai'i Psychological Association

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Testimony in Opposition to Senate Bill No. 726 The AMA 'Truth in Advertising' Campaign February 22, 2017

Honorable Chair Baker, Honorable Vice-Chair Nishihara, and Members of the Committee,

The Hawaii Psychological Association opposes SB726. This bill is essentially one that is being promoted by the guild-centric American Medical Association 'Scope of Practice Partnership', which "focuses the resources of organized medicine to oppose scope of practice expansions by non-physician providers" (see <https://www.ama-assn.org/about-us/scope-practice>). In addition to the intended purpose of the organization that formulated this legislation, the inherent bias of the bill can be seen in the 'study' referenced in other versions of the bill that were also introduced this year. That 'study' was simply a survey, not research, conducted under the auspices of the 'Scope of Practice Partnership' noted above.

It is also important to note that the 'Scope of Practice Partnership', in their promotional 'Truth in Advertising' campaign materials, provide no evidence that the use of the term 'doctor' by psychologists and other health care professionals has, as they assert, "put patients at risk".

This bill is simply another effort by organized medicine to gain a foothold in the ongoing turf battles. It is important to note that, to date, initiatives to expand the scope of practice of non-physician providers - programs that organized medicine opposes - have consistently resulted in increased access to high quality health care.

The Hawaii Psychological Association has no issue with a requirement that a licensed psychologist display, in their office or waiting room, a clearly visible copy of their license to practice psychology. It is already a requirement under HRS465-8. The additional requirement in this bill, that a provider wear a photo id displaying the practitioners name, type of license and expiration date of the license, is unnecessary. The proposed requirement actually exceeds what is required for members of medical staffs (i.e., expiration date of license is not typically required on photo ID name tags), and is largely inconsistent with outpatient practice, for physicians as well as nonphysicians.

Subsection 436B-C (a) of this bill is also problematic. It is unclear what “No health care provider shall knowingly aid...any unlicensed person or entity to practice or engage in acts CONTRARY to the health care practitioner’s DEGREE of licensure” means. Does it refer to activities that fall outside the health care practitioner’s legal scope of practice? If so, that is not clearly stated. It is also unclear what this statement implies. If, as a psychologist, I teach empathy and communication skills to a Native Hawaiian healer, am I now violating the law?

Subsection (b) of 436B-C is also of concern. Providers routinely delegate certain circumscribed tasks to assistants who work under them. The health care provider, of course, is responsible for the actions of the assistants who engage in these activities. For example, a licensed psychologist might employ the services of a trained, but unlicensed, psychometrist to administer certain psychological tests. The services provided fall within the psychologist’s lawful scope of practice, not the technicians. In this proposed bill, subsection (b) of 436B-C states that “no health care practitioner shall delegate or contract for the performance of health care services by a person that the health care practitioner knows, or has reason to know, does not have the required authority pursuant to the person’s licensure to perform such services”. This provision may seriously limit current health care practice and may also limit the ability of unlicensed medical or other health care trainees to perform the health care services they are required to learn. It also appears at variance with HRS465-3, which exempts psychology trainees and allows psychological assistants to engage in “any combination of the professional services defined as the practice of psychology under the direction of a licensed psychologist”.

SB726 is flawed, unnecessary and serves only to meet the needs of an organization who’s stated purpose is to “oppose scope of practice expansions by non-physician providers”. Please do not pass this bill out of Committee.

Raymond A. Folen, Ph.D., ABPP
Executive Director

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 10:06 AM
To: CPH Testimony
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for SB726 on Feb 22, 2017 09:00AM

SB726

Submitted on: 2/21/2017

Testimony for CPH on Feb 22, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Oppose	No

Comments: We support the following testimony of our member, Lenora Lorenzo: this bill is unnecessary and a waste of time for legislators to consider since it will not yield added benefit or protection for the people of Hawaii that does not already exist in our revised statutes. The bill asserts that "ample evidence exists of providers who are not medical doctors or doctors of osteopathic medicine holding themselves out as such" but fails to provide any evidence of these practices. It also fails to recognize that such activity, if it were to exist, is already governed by the state revised statutes. This Healthcare Professional Transparency Bill is also inconsistent in its approach to the issue of false representation of health care education and clinical training. The legislation seeks to impose significant criminal penalties on a select group of licensed providers, while ignoring many others. The bill fails to address the actions and representations of MDs and DOs that fall outside of their education, skills, and clinical training. The erroneous assumption that these providers should be exempt from the provisions of this bill does not serve today's patients and does not fulfill the stated intent of this legislation. Furthermore, this bill makes assumptions and claims without merit and threaten the continued development and success with collegial relationships between physicians and other licensed health care professions at a time when access to quality multidisciplinary care is at a premium. The Coalition for Patients' Rights (CPR) was formed in spring 2006 to counter the AMA's Scope of Practice Partnership (SOPP) and Health Care Transparency Acts initiatives to limit the scope of practice of non-physician healthcare providers. The CPR's goal is to improve access to a wide variety of healthcare professionals who deliver safe, affordable, and effective health care to patients. CPR members are committed to working with SOPP organizations to enhance patient access to quality care – rather than limiting access to quality health care. Over 35 organizations representing over 3 million licensed healthcare professionals have endorsed CPR's joint statement. A website has been created and can be found at <http://www.patientsrightscoalition.org/>. Nursing continues to be rated the most trusted profession, according to the annual Gallup poll ranking of honesty and ethics in various fields. For the past 14 years, the public has voted nurses as the most honest and ethical profession in America. This year, 85 percent of Americans rated nurses' honesty and

ethical standards as “very high” or “high,” tying a nurses’ high point on the Gallup poll and 17 percentage points above any other profession. On the question of “Who do you trust on the issue of health care reform?” the AMA noted that “Nurses are front and center,” with a 78% trust rating, versus 56% for doctors. Physicians are no longer held in such high esteem as they were decades ago. Even our own Commander-in-Chief, President Obama, alluded to the fact that doctors have financial incentive to do more surgeries. The public is losing their trust in physicians and see them as driven for profit. This bill appears to be another lobbying activity by AMA to keep the physician in power and control of healthcare for profit. Ethics is an essential part of nursing practice. This includes an ethical responsibility to ensure the safety of patients and the health and wellness of nurses and other health care providers. In 2015, ANA released a revision of its Code of Ethics for Nurses with Interpretive Statements, a cornerstone document of the nursing profession that reflects many changes and evolutions in health care and considers the most current ethical challenges nurses face in practice. The release was just one component of the “Year of Ethics,” a series of activities emphasizing the importance of ethics in nursing practice. Now more than ever, as consumers, we must have the right to choose the health care provider that best meets our needs and whom are practicing to the full scope of their education and licensure. Health care is evolving to be more patient focused rather than to serve the need of any specific providers. Mahalo for the opportunity to testify in strong opposition to this bill.

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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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 10:04 AM
To: CPH Testimony
Cc: bradleykuonp@gmail.com
Subject: *Submitted testimony for SB726 on Feb 22, 2017 09:00AM*

SB726

Submitted on: 2/21/2017

Testimony for CPH on Feb 22, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Bradley Kuo	Bradley Kuo, LLC	Oppose	No

Comments:

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Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

February 22, 2017 9:00 AM
SB 726 RELATING TO HEALTH CARE PRACTITIONERS

Written Testimony submitted by

Dr. Lenora Lorenzo DNP, APRN, BC FBP, GNP, ADM, FAANP

Aloha Chair Baker, Vice Chair Nishihara and members of the Senate Committee on Commerce, Consumer Protection, and Health. Mahalo for this opportunity to provide testimony in strong opposition to SB 726, Relating to Health Care Practitioners.

I am not in support of this bill and I have several points which when considered would lead the committee and members to conclude this bill is unnecessary and a waste of time for legislators to consider since it will not yield added benefit or protection for the people of Hawaii that does not already exist in our revised statutes.

The bill asserts that "ample evidence exists of providers who are not medical doctors or doctors of osteopathic medicine holding themselves out as such" but fails to provide any evidence of these practices. It also fails to recognize that such activity, if it were to exist, is already governed by the state revised statutes.

This Healthcare Professional Transparency Bill is also inconsistent in its approach to the issue of false representation of health care education and clinical training. The legislation seeks to impose significant criminal penalties on a select group of licensed providers, while ignoring many others. The bill fails to address the actions and representations of MDs and DOs that fall outside of their education, skills, and clinical training. The erroneous assumption that these providers should be exempt from the provisions of this bill does not serve today's patients and does not fulfill the stated intent of this legislation.

Furthermore, this bill makes assumptions and claims without merit and threaten the continued development and success with collegial relationships between physicians and other licensed health care professions at a time when access to quality multidisciplinary care is at a premium. The Coalition for Patients' Rights (CPR) was formed in spring 2006 to counter the AMA's Scope of Practice Partnership (SOPP) and Health Care Transparency Acts initiatives to limit the scope of practice of non-physician healthcare providers. The CPR's goal is to improve access to a wide variety of healthcare professionals who deliver safe, affordable, and effective health care to patients. CPR members are committed to working with SOPP organizations to enhance patient access to quality care – rather than limiting access to quality health care. Over 35 organizations representing over 3 million licensed healthcare professionals have endorsed CPR's joint statement. A website has been created and can be found at <http://www.patientsrightscoalition.org/>.

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percentage points above any other profession. On the question of “Who do you trust on the issue of health care reform?” the AMA noted that “Nurses are front and center,” with a 78% trust rating, versus 56% for doctors. Physicians are no longer held in such high esteem as they were decades ago. Even our own Commander-in-Chief, President Obama, alluded to the fact that doctors have financial incentive to do more surgeries. The public is losing their trust in physicians and see them as driven for profit. This bill appears to be another lobbying activity by AMA to keep the physician in power and control of healthcare for profit.

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Now more than ever, as consumers, we must have the right to choose the health care provider that best meets our needs and whom are practicing to the full scope of their education and licensure. Health care is evolving to be more patient focused rather than to serve the need of any specific providers.

Mahalo for the opportunity to testify in strong opposition to this bill.

Dr. Lenora Lorenzo DNP, APRN, BC FBP, GNP, ADM, FAANP

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**Written Testimony Presented Before the
Senate Committee on Commerce, Consumer Protection, and Health
February 22, 2017 9:00 AM**

by
Dr. Linda Beechinor, FNP-BC, APRN

SB 726 RELATING TO HEALTH CARE PRACTITIONERS

Dear Chair Baker, Vice Chair Nishihara and members of the Senate Committee on Commerce, Consumer Protection, and Health. Thank you for this opportunity to provide testimony in strong opposition to SB 726, Relating to Health Care Practitioners.

I am not in support of this bill and I have several questions regarding this bill, which when considered would lead any reasonable person to conclude this bill is superfluous and a waste of time for legislators to consider since it will not yield added benefit or protection for the people of Hawaii that does not already exist in our revised statutes.

- My first question is from where did this bill originate? Is this bill in response to identified problems in our state wherein there have been actual incidences of “deceptive or misleading information” being promulgated by healthcare practitioners in the advertising of their services? Are there records of incidents of verbal misrepresentation of healthcare practitioners’ “profession, skills, training, expertise, education, board certification, or licensure” that have been recognized by our Boards of professional licensure at DCCA, and consequently by RICO? If there has been subsequent harm to consumers caused by unscrupulous healthcare practitioners, I believe the current laws and administrative rules to protect consumers of healthcare are already in existence and are enforced by RICO.
- Have there been incidents of fraud regarding billing and collection of fees for services that were misrepresented by health care professionals, as this bill suggests? Surely that is the purview of insurance companies and Medicare and Medicaid. Why would this body be involved in ensuring fraudulently obtained fees for services be refunded?
- Since this bill seems to aim to gratuitously differentiate physician practitioners from all others, my question is: does this bill originate with the American Medical Association who have consistently over the years made it their business to protect their market by endeavoring to limit other health care practitioners scope of practice in any way possible, in every state in the country?
- My next concern is with the onerous requirements on every health care practitioner in the state to comply with these rules in advertising, postings in every office where they work, and on their name tags with a “recent photograph, name, license type and expiry date of license...”. How exactly are these measures addressing whatever the problems are purported to be? How will consumers benefit, or be protected by the enforcement of these requirements?
- And finally, infractions of these suggested rules (such as not wearing a name tag with a recent photograph on it?) would lead to “disciplinary action under the appropriate licensure provisions governing the respective health care practitioner”. This makes my point exactly: the rules regarding professional practice already exist under each Board for each professional discipline. The State already has the authority to impose penalties, and to seek legal action for violations of the Statutes, by a person who, for example practices, nursing or medicine in Hawaii without the appropriate license.

I do not understand the need for this bill in any other light than to intimidate licensed healthcare practitioners by reminding them in their everyday practice, of the powerful lobby of the medical profession in this country.

Thank you for the opportunity to testify in strong opposition to this bill.

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