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September 14, 2010

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA. 95814

Dear Governor Schwarzenegger:

Although the intent of AB 1235 - improve physician peer review in order to protect patients - is worthy of support, AB1235 must be vetoed because it does not accomplish its intended goal.

1. The authors may disagree, but many who are more knowledgeable believe the intent of this bill is not satisfied. Rather than improving the quasi-judicial proceedings whereby the quality of medical care provided by a physician is judged, AB1235 makes the process less fair and effective by giving more power to the peer review hearing officer who functions as the judge, prosecutor and jury.

2. AB 1235 also permits hospitals to terminate a physician's privileges if he loses/drops a contract with a group. For instance, if a neurosurgeon is a member of a group that contracts to provide exclusive ER on-call services and then quits the group, AB1235 lets the hospital terminate some (or all) of the neurosurgeon's privileges without a fair hearing. Here is the language:

"However, with respect to services that may only be provided by members who have, or who are members of a medical group that has, a current exclusive contract for those identified services, termination of the contract, or termination of the member's employment by the medical group holding the contract, may result in the member's ineligibility to provide the services covered by the contract.

This poison pill is not related to peer review, and will deny patient's access to physicians. For this reason alone, AB 1235 should not become law.

What is needed: due process rights for peer reviewed physicians to a) know the charges, b) confront all witnesses and c) be innocent until proven guilty. In addition, there needs to be a method to appeal "convictions" and a way to get unfounded 805 reports out of the National Practitioner's Data Bank. None of these are accomplished by AB1235. Instead, AB1235 lets hospital administrators and physician employers or competitors continue to snipe at physicians, including colleagues with whom they compete.

By holding AB1235 back as a two year bill, interested parties will be able to work together to improve that language in order to achieve the intended goal: fair and effective physician peer review.

Sincerely,

William G. Preston, MD, FAAN, ACN President