



Alliance for Patient Safety

*All that is necessary for the triumph of evil...
... is for good men to do nothing.*

Edmund Burke

URGENT AMENDMENT REQUIRED in AB 655 (Hayashi)

Re: Transfer of Peer Review Records from one Hospital to Another

32 PAGES **SENT VIA FAX: June 12, 2011**

ATTENTION: California Assemblymember Mary Hayashi, 18th Assembly District,

Chair, [Assembly Committee on Business, Professions and Consumer Protections](#)

Dear Assemblymember Hayashi,

First and foremost, I would like to express my deepest appreciation for your personal involvement, over many years, on behalf of Physicians and Patients in CA, in order to assure the best possible quality of delivery of care in our great State.

As you know, CMA's Government Affairs Dept. submitted last week an amendment to AB 655, presently under review by the CA Hospital Association, CHA.

In fact, despite everyone's best efforts and good intentions, this bill in its current form is very dangerous and contrary to the spirit and the letter of current CA law.

Following, please find, for your consideration the comments, thoughts and suggested amendments provided by prominent members of our community regarding this bill.

The following correspondence, twenty seven (27) e-mails, is between myself and:

- 1) Dr. Hinsdale, President, California Medical Association, CMA,
- 2) Dr. Weinmann, Past President, Union of American Physicians and Dentists, UAPD, affiliated with the AFL/CIO,
- 3) Dr. Zwelling, Past President, Los Angeles County Medical Association, LACMA,
- 4) Dr. Garfinkle, prominent General Surgeon, in Hayward, CA, 18th District,

5) Dr. Rao, victim of retaliation by Washington Hospital, in Alameda County, because of his participation in a documentary entitled,

" Life for Sale ", <http://evelynlimd.blogspot.com/>, see:
Is Peer Review on a Collision Course with Finance? by Robert Weinmann, M.D.
Summary of Retaliation against Dr. Rao from *The Weinmann Report*.
<http://politicsofhealthcare.blogspot.com/2011/01/is-peer-review-on-collision-course-with.html>

6) Sharon Kramer, prominent CA Healthcare Activist, particularly regarding the adverse effects of toxic elements in building, such as Mold,...

see: <http://katysexposure.wordpress.com/2010/04/30/truth-out-sharon-kramer-letter-to-andrew-saxon-mold-issue/>

7) Dr. Moza, victim of retaliation by hospitals in CA, <http://allianceforpatientsafety.org/moza.php>

Clearly, there still is a lot of work to perfect AB 655 and I have no doubt that your dedicated staff will work diligently to incorporate the enclosed suggested amendments as fast as possible, but this is not a speeding competition, as haste is not only waste, but could be counter productive, if AB 655 does not accomplish what it was intended to achieve.

Hence, I respectfully request that you provide a copy of this fax to all members of the Senate B&P Committee, on Monday, June 13, 2011, so that they can benefit from the enclosed analysis by experts in these issues, sharing their knowledge and legitimate concerns.

Please incorporate this correspondence into the legislative history of AB 655, thanks.

I am available to you and your hard working staff, 24/7, to answer any questions you may have.

Once again, I wish to thank you very much for your dedication,

Respectfully submitted,



Gil Mileikowsky MD

- President and Founder,
- Alliance For Patient Safety, AFPS, <http://allianceforpatientsafety.org/>

- <http://allianceforpatientsafety.org/socalphysgm.pdf>
- <http://allianceforpatientsafety.org/blackbox.pdf>

ENCLOSURES:

Correspondence, twenty seven (27) e-mails, between myself and:

1. From: uapdhq@aol.com

Subject: Re: AB 655 (Hayashi): Healing arts: peer review.

Date: March 14, 2011 10:24:40 AM PDT

To: gil@allianceforpatientsafety.org,

Any legislation that purports to upgrade peer review should contain provisions to expunge wrong or incorrect information in doctors' files.

Fiona Ma proposed such legislation (AB 245). It was opposed by the med board.

Why would the med board want to maintain posting of material they know is incorrect?

Robert L. Weinmann, MD, Editor, The Weinmann Report

www.politicsofhealthcare.blogspot.com

2. From: rlweinmann@yahoo.com

Subject: Re: Comments re: Amended AB 655 (Hayashi)

Date: June 4, 2011 8:42:49 AM PDT

To: gil@allianceforpatientsafety.org

But the "but" could, and probably will, loom large one day when a hospital, in compliance with the law, sends a contaminated report to another hospital that accepts it in good faith. If and when the defamed doctor finds out about the elements of bogus peer review in the reports from the first hospital, and complains to the second hospital, he'll be told that he has to get the first hospital to rectify the mistake. Then the first hospital will tell the aggrieved doctor that he doesn't have standing there anymore and to see his lawyer.

Twenty grand retainer later, that's what he'll do, that or just hunker down and live with it, if he can. BTW in my 1995 editorial in Clinical EEG I used the term "bogus," not "sham." No particular reason except that peer review doesn't just include official judicial hearings -- it may also be done in M & M hearings, panel selection, etc.

Anyway, there isn't much interest in AB 655 except from the sponsor (you can guess who). There's no great worry. Why should there be? After all, even within individual hospitals, most peer review hearings are fairly conducted, right, pal?

bob

Robert L. Weinmann, MD, Editor

The Weinmann Report

www.politicsofhealthcare.com

3. Subject: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

From: gil@allianceforpatientsafety.org

Date: June 5, 2011 12:44:06 PM PDT

To: drhinsdale@aol.com

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org, neurosurgery@verizon.net, Solo_SmallGroupDelegates@cmanet.org, ExCom@ssgpf.com and [51 more...](#)

URGENT AMENDMENT REQUIRED in AB 655 (Hayashi)

Re: Transfer of Medical Peer Review Records from one Hospital to Another

Attention: Dr. Hinsdale - President - California Medical Association, CMA

Dear Dr. Hinsdale,

Following careful review of the latest version of AB 655, I do not see where it mandates that copy of every single information transferred from one hospital to the other has to be provided to the involved physician, otherwise the physician is a sitting duck exposed to possible malicious defamatory reporting without his or her knowledge.

A typical example of such vicious and malicious defamatory conduct exhibited by hospitals and their attorneys can be observed in the following case, among many others, see:

Retaliation Against Paul A. Ironside, M.D., Ph.D.,
<http://allianceforpatientsafety.org/ironside.php>

90. Declaration of Paul A. Ironside, M.D., dated 3/24/2004

Regarding the past conflict of interest of Suzanne Van Hall Esq, while acting simultaneously as hospital attorney and Medical Staff attorney, at Simi Valley Hospital in California. Dr. Ironside was the target of a sham peer-review at Simi Valley Hospital.

After leaving California, he was further pursued in Tennessee, despite exoneration by the Medical Board of California's investigation and hearing.

See all supporting documents attached to Dr. Ironside's declaration, [Download PDF File](#)

Kindly review this matter, forthwith, and request that CMA's legislative and legal Departments submit the appropriate amendment to protect physicians from bogus unfounded allegations solely instigated to ruin their reputation.

We must prevent this recurrent and pervasive conduct by implementing the appropriate measures to remedy this problem once and for all.

Thank you very much in advance for your diligent attention to this serious matter that has reached epidemic proportions.

I wish to express my deepest gratitude to you and CMA for your long standing advocacy, in the best interest of CA Physicians and Patients.

Respectfully submitted,

Gil Mileikowsky MD - <http://allianceforpatientsafety.org/socalphysgm.pdf>

P.S: Following, please find, the latest amended text of CA Bill AB 655 (Hayashi), as of June 1, 2011, regarding the Transfer of Peer Review Records from one Hospital to Another, http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_655&sess=CUR&house=B&author=hayashi

The CA Senate Business & Professions Committee should review it on or about June 13, 2011.

4. From: rlweinmann@yahoo.com

Subject: Re: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 1:44:11 PM PDT

To: drhinsdale@aol.com, gil@allianceforpatientsafety.org

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,
neurosurgery@verizon.net, Solo_SmallGroupDelegates@cmanet.org, ExCom@ssgpf.com and 50

Dear All,

I have previously asked about having sham peer review addressed in this bill as in amended language.

As AB 655 (Hayashi) stands now, it is open to mischief. Bogus peer review material may be transferred in this manner without the knowledge of the peer who is being investigated.

The potential mischief is that the bill doesn't provide for transfer of peer review information to the doctor undergoing peer review -- only from one hospital to another. In the case of a doctor where there's controversy, even administrative as opposed to medical practice, the type of transfer that AB 655 (Hayashi) currently proposes would not prevent the information from being used as a peer review ambush.

I have advised several of our physicians' organizations about this deficiency which could be cured by an appropriate amendment when the bill is next heard in committee, so far on schedule for June 13th.

The appropriate amendment would require transfer of the submitted material to the doctor undergoing peer review to be simultaneously transferred to the doctor undergoing peer review.

Your comments are welcome. This item is newsworthy.

Robert L. Weinmann, MD, Editor
The Weinmann Report
www.politicsofhealthcare.com

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5. From: DRHINSDALE@aol.com

Subject: Re: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 3:07:53 PM PDT

To: rlweinmann@yahoo.com, gil@allianceforpatientsafety.org

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net, Solo_SmallGroupDelegates@cmanet.org, ExCom@ssgpf.com,
mikecouris@aim.com and [49 more...](#)

OK, Gil, Bob: This has my attention. It's hard to argue that a doctor could have peer review data, activity, or whatever, sent around the world without his knowledge. In every hospital or place I've been to, a doctor has had the right to look at what they were dropping into his file. That's bedrock to me. I further believe that a doctor should **know** that his personal info is being sent elsewhere, and to **where**. Hell, we do as much for patient confidentiality in HIPPA, almost to the extreme.

I do support a facility being able to request and receive peer review info, for the purposes of granting privileges on a staff. The MD in focus should have full awareness that the process is going down, and doesn't have the right to veto **what** is said---but should have the right **to see what is said**. I further believe the doctor should have the right to **challenge** what is said, should the doctor feel there has been mis-representation.

If we're going to have peer review exchange, it should be done fairly and as transparently as possible (within the framework of what is "peer review"---protecting both the the right of the doctor to be treated fairly and the public good so that the hospital granting status or privileges has had a realistic chance to review the doctor in the goal of protecting patient safety).

I'm not out for political correctness---but rather to see that doctors get fair and reasonable advocacy. We've always been for what's best for patients as an inherent starting point.

Hinsdale

6. From: gil@allianceforpatientsafety.org

Subject: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 4:05:36 PM PDT

To: DRHINSDALE@aol.com

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com,
fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com,

jgivens@cmanet.org, neurosurgery@verizon.net, Solo_SmallGroupDelegates@cmanet.org,
ExCom@ssgpf.com,...

Dear Dr. Hinsdale,

I am most impressed by your swift response, let alone on a sunday !

I had no doubt that we would agree on all of these principles, as they are so basic.

Unfortunately, some hospitals maintain so called administrative files on physicians, which are not part of the physicians' credential files and medical staff offices' attorneys do not voluntarily make these file readily available to the physicians. It is very common during administrative proceedings, i.e. Hearings, for hospitals to deny access of the credential files to the physicians and ask their hospital appointed and remunerated hearing officers to determine which documents the physician will or not be allowed to review and enter into evidence to defend itself against concocted allegations.

This process is often characterized as the " Spanish Inquisition in the Wild West ", others use the terms " Kangaroo courts " or " Star Chambers ",
http://en.wikipedia.org/wiki/Star_Chamber.

Hence, any information transmitted by any hospital to another hospital pertaining any physician MUST be copied to the physician, so that the physician can assure the accuracy of such records, whether electronic or in any other form, whether in the credential file or any type of " Administrative " file, which is usually kept by any administrator, such as a CEO, COO, CNO, in the Q&A Dept, Performance Improvement, PI, Dept,...

I am most familiar with all the above loopholes of the law or outright violations of both the spirit and the letter of the law, as I discovered such practices during my numerous aborted hearings and my multiple cross examinations of administrators, such as the COO of Encino-Tarzana Regional Medical Center, ETRMC. ETRMC is not alone, as this is the usual and customary standard of practice of hospital administrators in CA, at West-Hills Hospital and

Medical Center, WHHMC, an HCA facility and all over the country, as evidenced on our website, at: <http://allianceforpatientsafety.org/>

Unfortunately, as it is written presently, AB 655 does NOT protect any physician from any type of malicious conduct performed without the physician's knowledge and approval, whether perpetrated by the medical staff office and any other administrative or medical branch of a hospital.

Hence, since we agree on all of the above necessary safeguards, kindly instruct CMA's legal counsel to draft together with the legislative dept. the appropriate amendments that will assure that all of our concerns are implemented and unequivocally mandated prior to June 13, 2011, when CA's Senate Business & Professions Committee will consider approving or denying AB 655.

Once again, I wish to salute your personal involvement on behalf of all physicians to assure the best quality of care to our patients.

Respectfully yours,

Gil Mileikowsky MD

P.S: I am available 24/7 to assist you and anyone else prior to submitting such amendments of AB 655

7. From: garsurg@comcast.net

Subject: RE: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 4:48:59 PM PDT

To: DRHINSDALE@aol.com, rlweinmann@yahoo.com, gil@allianceforpatientsafety.org

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net and 51 more...

Jim,

May I suggest that CMA ask Dr's Mileikowsky and/or Weinmann to provide CMA with the desired language for an amendment, if they haven' already done so.

I personally believe that the physician should have the opportunity to see the information, of course with appropriate confidentiality for the peers, which is intended to be sent before it is sent. This would afford him/her the opportunity to point out and suggest corrections of any factual errors, which the sending administration/medical staff may or may not be willing to accept and correct. But if they do make the corrections it could save everybody a lot of headaches that would be involved if the physician were to have to try to correct them after the fact.

Jay Garfinkle

8. From: rlweinmann@yahoo.com

Subject: Re: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 4:49:23 PM PDT

To: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net and [52 more...](#)

Good solid statement from Dr. Hinsdale; however, if the doctor undergoing peer review correctly detects flawed information in a peer review communication, he should have the right not only to **veto** it but also to have it **expunged**. This opportunity should be amended into the bill. THAT is how we convert a theory of fairness into the practice of fairness.

Robert L. Weinmann, MD, Editor

The Weinmann Report

www.politicsofhealthcare.com

9. From: rlweinmann@yahoo.com

Subject: RE: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 4:58:58 PM PDT

To: DRHINSDALE@aol.com, gil@allianceforpatientsafety.org, garsurg@comcast.net

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net, Solo_SmallGroupDelegates@cmanet.org, ExCom@ssgpf.com,
mikecouris@aim.com and 48 more...

Good suggestion, Dr. Garfinkle -

- it should reduce the chances of defamation and prevent the inevitable lawsuits that might be engendered otherwise.

Is it not correct that the federal statute on peer review removes immunity from peers who have been shown to be careless with the truth?

A number of doctors are already in more trouble than they'd bargained for on this basis.

CMA staff can report back to CMA on this topic if they didn't do it first time around.

Robert L. Weinmann, MD, Editor

The Weinmann Report

www.politicsofhealthcare.com

10. From: DRHINSDALE@aol.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 5:01:36 PM PDT

To: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com,
fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com,

jgivens@cmanet.org, neurosurgery@verizon.net and [52 more...](#)

All right, Gil. Thanks. I typically don't "instruct" Mr. Silva on how or what to do as an attorney, but simply treat him as what he is: a superb attorney that advises us physicians and tries to put the concepts and values we want to convey into action, consistent with what the law is---or how we want to shape our law to be.

That said, I would urge everyone to stay calm and focused on what's at issue and stick to our issues. Jay Garfinke and Bob Weinmann have already posted advisory points for amendment. Mary Hayashi is, perhaps, one of the friendliest legislators that CMA has come to know. I do think it reasonable to have these points forwarded to both Francisco (our legal advisor) and through our legal advocacy dept (Jodi Hicks) to see if they can get sculpted.

We are in the thick of the legislative season and there is much going on. This, however, is of keen importance. The executive committee of CMA will be meeting 2 weeks from now within the AMA meeting. I think this is worthy of being looked at. It never occurred to me that ex parte deliberations would occur over a doctor's professional welfare without his knowledge.

Jim Hinsdale

11. From: rlweinmann@yahoo.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 5:45:25 PM PDT

To: surgeonsconsultant@yahoo.com, gil@allianceforpatientsafety.org

Cc: sabussey@aol.com, dchiappetta@uapd.com, al@uapd.com

Dear All,

What we're being asked to do now is provide language for an amendment. Something like "at the same time as peer review information is transferred or transmitted to a requesting hospital, copies of the same documents should be simultaneously given to the doctor who is undergoing peer review.

If the doctor undergoing peer review detects material that he/she feels is incorrect, he/she should have the opportunity to veto that language and to seek its expungement from the original document."

I don't think UAPD's excellent legislative office has time for this one. CMA knows well enough what needs to be done. I've communicated with some other ostensibly pro-doctor organizations that've remained silent. Not to worry -- slinking away will not go unnoticed!

By the way, Gil, as long as you keep referring to the excellence of the UAPD legislative office, I, at least, won't bug you anymore about dues!

bob

12. From: vishvendra@gmail.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 7:57:40 PM PDT

To: gil@allianceforpatientsafety.org

Cc: DRHINSDALE@aol.com, rlweinmann@yahoo.com, kboroski@cmanet.org,
lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org,

astridmeg@yahoo.com and [53 more...](#)

Dr Mileikowsky is correct.

It is common knowledge that administrators keep a separate file on physicians which is not under medical staff control, (Hoover's dossier system).

This file comes out in disciplinary hearings.

Washington Hospital Fremont has medical staff bylaws and policy contains a provision that a physician can request access to credential files and also request material to be expunged or contested .

I used to religiously request access to the file every year and was provided a sanitized version.

When I went for hearing they produced documents as exhibits from 1999 including letters about dispute IPA which I was heading at that time.

The issue is how do you define peer review material ?

What are the protections to prevent unsubstantiated unverified material from being transmitted and damaging a physician ?

The hitch is that at the time of re appointment we routinely sign authorization papers allowing the other healthcare facilities to provide information

RVR

13. From: marcy@z-doc.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 8:09:41 PM PDT

To: vishvendra@gmail.com

Cc: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com and 55 more...

It would seem to me that the obvious thing to do is to legislate full disclosure ...

Anything that is NOT disclosed should never be admissible to any proceedings.

How best to do that ?

Marcy Zwelling-Aamot, M.D.

14. From: rlweinmann@yahoo.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Peer Review Records from one Hospital to Another

Date: June 5, 2011 8:37:50 PM PDT

To: vishvendra@gmail.com, marcy@z-doc.com

Cc: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, kboroski@cmanet.org,
lcobb@humboldt1.com, fsilva@cmanet.org,

dcorcoran@cmanet.org and 53 more...

The best way to do that, Marcy, would be to make so doing a matter of law with civil and criminal penalties for failure to comply.

One could amend AB 655 when next it comes to committee hearing (that'll be soon) or make it into a two-year bill. Another way would be to try for a Gubernatorial veto if it passes. If it gets signed into law as is you can expect lawsuits later when doctors start getting nailed based on bogus peer review evidence.

What is surprising is that AB 655 (Hayashi) has gotten this far without having had to address this issue in amended language despite its having been called to the attention of CMA. You should also know that there's several doctors around the country who've had their coveted peer immunity stripped from them when it became clear that they'd subverted the truth for the benefit of this or that administration.

Doctors, licensed by states, have a public duty. Hospital administrators are not similarly licensed.

Bob Weinmann

Robert L. Weinmann, MD

The Weinmann Report

www.politicsofhealthcare.com

15. From: SNK1955@aol.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 8:38:53 PM PDT

To: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org, neurosurgery@verizon.net and 52 more...

Gil,

Good catch. I did a quick read of the bill.

Looks to me that a hospital could easily retaliate against a physician who chose to leave a hospital with problems under this bill.

I could see a hospital sending damning info to a new hospital for the purpose that the doctor does not speak or is discredited of what occurred

(and is maybe still occurring) in the first hospital-

-Under this bill in its current form, the physician would have no way to defend himself against the dissemination of misinformation about him.

The hospital has immunity for the info they relay.

No names are to be disclosed of who relayed the info.

The language of the bill in its current form.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_655_bill_20110601_amended_sen_v97.pdf

Thanks for helping to keep integrity in the CA medical profession.

Sharon

16. From: rlweinmann@yahoo.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 9:14:18 PM PDT

To: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, SNK1955@aol.com

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org,
dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net and [52 more...](#)

Dear All,

It should not be difficult to correct this particular deficiency in AB 655 (Hayashi).

One way to repair this bill would be to insert language after line 10 stating as follows:

"All information sent to the requesting peer review entity must simultaneously be sent to the doctor undergoing peer review. The doctor shall be enabled to review the material and veto material that is inaccurate or unproved. The doctor shall also be enabled to have inaccurate or unproved material expunged from the original document." It is difficult to understand how this oversight slipped by our delegation and an excellent legislative staff.

Robert L. Weinmann, MD, Editor

The Weinmann Report

www.politicsofhealthcare.com

17. From: garsurg@comcast.net

Subject: RE: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 9:30:21 PM PDT

To: SNK1955@aol.com, gil@allianceforpatientsafety.org, DRHINSDALE@aol.com

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org, neurosurgery@verizon.net and [51 more...](#)

Sharon,

You may not have intended this but you raised an interesting issue, and that is the situation in which a physician has already left a medical staff.

The reason for leaving is irrelevant. He/she may simply have relocated to another town or state for reasons totally unrelated to his/her practice history at My First Community Hospital. When he/she applies for privileges at My New Community Hospital a request for info will be sent from New to First. As the law now exists the doc has no way of knowing what First will tell New. The doc is no longer on First's medical staff and is probably not entitled to any significant credential's file access or protection and would have little recourse for correcting errors short of the courts. Perhaps the amended AB655 should also address the issue of docs who have already left the staff of one hospital and are applying to another one. This probably should also factor in reports to the medical boards and data banks.

Marcy,

Your statement that "...anything that is NOT disclosed should never been admissible to any proceedings..." suggests to me that you may be thinking of JRC's or other legal and quasi-legal *proceedings*. The problem we are addressing here, at least I think the problem we are addressing here, is that related to the processing of an application for appointment or reappointment to a medical staff. This is long before there is any consideration of *proceedings*. This is the Credentials Committee phase where there is the potential for decisions to be, at least in part, based on hearsay, reputation, and unsubstantiated accusations. This is the early phase of credentialing where it is critical that false statements, accusations, innuendoes, etc. must be prevented from entry into the process.

Jay Garfinkle

18. From: garsurg@comcast.net

Subject: RE: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 9:38:31 PM PDT

To: rlweinmann@yahoo.com, gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, SNK1955@aol.com

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org,

neurosurgery@verizon.net and 51 more...

Bob,

May I humbly suggest that *simultaneously* is already too late to be of optimal protective benefit?

The pig is out of the barn by then and you can't put it back into the tube.

It would be preferable, from my standpoint, to require the sharing of the contents of the document with the doc before it is actually put in the mail to the requesting entity. And the doc must be afforded a reasonable time in which to study it and submit an ok or objection.

Jay Garfinkle

19. From: DRHINSDALE@aol.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 9:56:38 PM PDT

To: garsurg@comcast.net, SNK1955@aol.com, gil@allianceforpatientsafety.org, DRHINSDALE@aol.com

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com,

jgivens@cmanet.org, neurosurgery@verizon.net and 51 more...

Everyone: I have been impressed with the discussion. It has been civil, educative, and focused on the issues of protecting doctors. It is late Sunday night and I will confer with Mr Silva tomorrow. There may be stuff that has happened, despite what we see in the bill's language, that I, and many of us, need to be brought up to speed on.

So, as long as constructive suggestions keep coming in, thanks. I must say, from my recollections in applying to hosp staffs (I have done many, many of these over the recent years in my trauma center works), one should read the fine print above what one signs.

It is god-awful---it pretty much has you sign off agreeing to release and indemify anyone who gets involved for any and everything that may happen, whether done out of malice or not. And most everyone signs this stuff! I guess it is felt that being on a hospital staff is not any kind of "right"---but is a privilege---allowing for a doctor to get jerked around as much as the system may wish to do. It's all pretty much in favor of the hospital AFAIK (as far as I know).

I'm not sure whether any physician is protected even if there is malicious intent, and one can only hope that federal anti-discrimination statutes would supercede anything that might come up along those lines (such as race, gender stuff), but one never knows.

We'll see how it goes. Don't forget, Assemblywoman Mary Hayashi has been a CMA friend and done a lot of good for us. But, we need to be sure practitioner's rights are protected.

I often quote a line from Francois-Marie Arouet (Voltaire): **"May God spare me from my friends: My enemies I can defend against"**

Hope everyone's coming to Santa Clara's awards banquet Tuesday night at the Fairmont.

See you
Jim Hinsdale

20. From: vishvendra@gmail.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 5, 2011 10:14:03 PM PDT

To: SNK1955@aol.com

Cc: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com and 56 more...

I did look at the website.

As the proposed bill stands now the information cannot be transmitted without consent and release from the physician Page 3 line 22 and 23 .

I fail to see the issue about the information being transmitted in uncontrolled manner .

Only issue is How do you define a "peer review body constituted for medical disciplinary cause or reason" (section 1 B line 10)?

(Does it include investigative committees , MEC , departmental committees ?)

The physician should be allowed to inspect the material which is being transmitted to make sure that the material is accurate, complete without any omissions

RVR

21. From: SNK1955@aol.com Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655

Date: June 6, 2011 3:22:18 AM PDT To: vishvendra@gmail.com Cc: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, rlweinmann@yahoo.com,

"The physician should be allowed to inspect the material which is being transmitted to make sure that the material is accurate, complete without any omissions." ...before consenting to its release.

Yes. If I am reading it correctly, that is exactly what is missing.

The physician has no mechanism of review or correction if the info being relayed about them from one hospital to the next is incomplete and/or inaccurate. Right? (It does have a clause about acting in good faith, but that is after the fact and the damage would already be done).

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_655_bill_20110601_amended_sen_v97.pdf

Pg 3 (d) Prior to the release of any peer review information pursuant to this section, the licentiate under review by the peer review body requesting information pursuant to this section shall, upon request, release the responding peer review body, its members, and the health care entity for which the responding peer review body conducts peer reviews, from liability for the disclosure of information in compliance with this section.

(e) The responding peer review body is not obligated to produce the relevant peer review information pursuant to this section unless both of the following conditions are met:

- (1) The licentiate provides a release, as described in subdivision (d), that is acceptable to the responding peer review body.
- (2) The requesting peer review body signs a mutually agreeable peer review sharing agreement, as described in subdivision (c), with the responding peer review body.

c) says, "(c) The responding peer review body acting in good faith is not subject to civil or criminal liability for providing information to the requesting peer review body pursuant to this section. The peer review body responding to the request shall be entitled to all confidentiality protections and privileges provided by law as to the information disclosed pursuant to this section. Prior to the release of any peer review information pursuant to this section, the requesting peer review body shall, upon request, sign a mutually agreeable peer review sharing agreement with the responding peer review body, and shall also indemnify the responding peer review body for any and all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, resulting in any manner, directly or indirectly, from the receiving peer review body's improper release or disclosure of information shared pursuant to this section ---Sharon Kramer

22. From: vishvendra@gmail.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer of Pee...

Date: June 6, 2011 7:33:03 AM PDT

To: SNK1955@aol.com

Cc: gil@allianceforpatientsafety.org, DRHINSDALE@aol.com, rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com,

The defect in the proposed bill can be remedied by adding

- 1) For the purposes of this section Peer review Body is defined as a panel convened for physician disciplinary action under California Business and Professional code 809
- 2) Requesting peer review body will inform the licentiate the receipt of the transmitted information within 4 weeks
- 3) Licentiate at his own expense can inspect and copy the information received by the requesting peer review body
- 4) Licentiate shall be allowed to provide any additional relevant information regarding accuracy and completeness of the information received

(He will be allowed to contest the findings?)

The issue is that each hospital has to make independent disciplinary decision and hearing on physician irrespective of disciplinary action in another facility .

I think this is supported by case law.

So can the receiving peer review body use this as an exhibit in its disciplinary action?

This creates a substantial prejudice to the contesting physician in a different disciplinary hearing .

This can create a snowball and ripple effect .

I can also see apposite point of view regarding the issue of public safety where the physician is engaged in repeated acts of negligence and skips one facility to another. But I think that is already addressed by the National Data Bank, access to 805 report by healthcare facilities and access to any disciplinary actions taken by MBC (resulting from adverse recommendations of original peer review body) .

So why is the need for another bill?

Practical effect of the law is that disciplinary action from one facility can be carried over to another facility hearings irrespective whether the original disciplinary action is a fair or sham review .

This creates a burden on the physician in the second hearing in trying to convince the panel that the information received is a bad faith action by the responding peer review body.

RVR

23. From: garsurg@comcast.net

Subject: RE: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) - specific considerations

Date: June 6, 2011 9:14:08 AM PDT

To: DRHINSDALE@aol.com, SNK1955@aol.com, gil@allianceforpatientsafety.org

Cc: rlweinmann@yahoo.com, kboroski@cmanet.org, lcobb@humboldt1.com,
fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com,

Good morning Jim,

If there is to be further consideration by CMA attorneys and/or lobbyists of amending AB 655 I would like to be sure that they consider incorporating the following thoughts:

1. The requested information can be shared with only a requesting hospital's peer review committee and **not its credentials committee**.
2. The subject physician has the opportunity to review and either object to, or agree with, the accuracy of the information to be released **before it is released** and that the information may not be released until the objection has been satisfied or that a reasonable effort on the part of the releasing hospital has been made to remedy the objection.
3. The information that may be released/shared can be only that which has been derived from a **completed peer review process** or processes and that **no reference** can be made to any review **still in process**. That is, if there is a JRC planned/scheduled/in process no reference can be made to this fact without the **specific**, not just implied, consent of the subject physician.
4. The information can be only that which has been obtained and recorded in a **completed peer review process** and may not be information obtained by an **administrative** process on the part of the hospital (as distinguished from the information obtained by the medical staff's peer review committee; as I believe that the administration's information may not be 1157 protected.).

If my concerns are irrelevant to the issue being discussed in this thread I apologize for the diversion.

Have a great week, Jim.

Jay

24. From: SNK1955@aol.com

**Subject: Fwd: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) - specific
conside...**

Date: June 6, 2011 9:21:24 AM PDT

To: gil@allianceforpatientsafety.org

I would say that you hit a nerve! Good job on this.

It looks to me that the way that bill is written, it is presumed the accused physician is guilty and assumed the hospital (and its attorneys and insurers) will relay accurate info.

Sharon

25. From: josephmoza@aol.com

**Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) re: Transfer
of Peer Review Records from one Hospital to Another**

Date: June 6, 2011 10:50:42 AM PDT

To: gil@allianceforpatientsafety.org

There is a problem with sharing the information?

Are they going to share the medical records and other evidence that may exonerate the
physician?

26. From: rlweinmann@yahoo.com

Subject: RE: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) - specific considerations

Date: June 6, 2011 10:34:07 PM PDT

To: DRHINSDALE@aol.com, SNK1955@aol.com, gil@allianceforpatientsafety.org, garsurg@comcast.net

Cc: kboroski@cmanet.org, lcobb@humboldt1.com, fsilva@cmanet.org, dcorcoran@cmanet.org, astridmeg@yahoo.com, jgivens@cmanet.org, neurosurgery@verizon.net, ExCom@ssgpf.com and 48 more...

Jim,

JAY'S recommendations are OK with me. Point is now that the door has been opened we all see that the original legislative language was shortsighted. In item # 2, Jay uses the word, "reasonable."

Since these hearings are likely to be anything but friendly, what one side thinks is "reasonable" may be a far cry from what the other side thinks is "reasonable." Now that you have at least two drafts with which to work, given proper direction, CMA and the author should be able to make the needed improvements.

bob weinmann

27. From: vishvendra@gmail.com

Subject: Re: F/U - URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) - specific considerations

Date: June 6, 2011 11:25:52 PM PDT

To: rlweinmann@yahoo.com

Cc: DRHINSDALE@aol.com, SNK1955@aol.com, gil@allianceforpatientsafety.org, garsurg@comcast.net, kboroski@cmanet.org and 54 more...

The issue is again what is the need for the bill ? The peer review body has access to 805 report, National practitioner data bank and any disciplinary action by MBC. The concern is that any bad faith review action is carried on to different facility peer review body and influence it from making independent judgment.

The issue is that each hospital has to make independent disciplinary decision and hearing on physician irrespective of disciplinary action in another facility . I think this is supported by case law.

So can the receiving peer review body use this as an exhibit in its disciplinary action? This creates a substantial prejudice to the contesting physician in a different disciplinary hearing .

This can create a snowball and ripple effect.

I can also see apposite point of view regarding the issue of public safety where the physician is engaged in repeated acts of negligence and skips one facility to another. But I think that is already addressed by the National Data Bank , access to 805 report by healthcare facilities and access to any disciplinary actions taken by MBC (resulting from adverse recommendations of original peer review body) .

So why is the need for another bill?

Practical effect of the law is that disciplinary action from one facility can be carried over to another facility hearings irrespective whether the original disciplinary action is a fair or sham review . This creates a burden on the physician in the second hearing in trying to convince the panel that the information received is a bad faith action by the responding peer review body.

The defect in the proposed bill can be remedied by adding

- 1) For the purposes of this section Peer review Body is defined as a panel convened for physician disciplinary action under California Business and Professional code 809
- 2) Requesting peer review body will inform the licentiate the receipt of the transmitted information within 4 weeks
- 3) Licentiate at his own expense can inspect and copy the information received by the requesting peer review body
- 4) Licentiate shall be allowed to provide any additional relevant information regarding accuracy and completeness of the information received

(He will be allowed to contest the findings?)

We gave our input it is time for legal brains to figure it out

RVR
