



Alliance for Patient Safety

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

Edmund Burke

Opposition to AB 655

Attention: Senator Price, Chair,
Senator Bill Emmerson, Vice Chair,
Senator Gloria Negrete Mc Leod,
Senator Ellen Corbett,
Senator Lou Correa,
Senator Ed Hernandez,
Senator Juan Vargas,
Senator Mimi Walters,
Senator Mark Wyland,
Bill Gage, Chief Consultant and Rosielyn Pulmano, Consultant,

California Senate Standing Committee on Business, Professions and
Economic Development

Sent by Fax: [\(916\) 445-8899](tel:9164458899), Fax: [\(916\) 327-2187](tel:9163272187), Fax: [\(916\) 445-0128](tel:9164450128), Fax: [\(916\) 327-2433](tel:9163272433), Fax: [\(916\) 445-0485](tel:9164450485), Fax: [\(916\) 327-3522](tel:9163273522), Fax: [\(916\) 445-9754](tel:9164459754), Fax: [\(916\) 446-7382](tel:9164467382), and E-mail.

August 15, 2011.

Honorable Senator Price,

Honorable Senators members of the Senate B & P Committee,

Thank you very much for your long standing commitment and dedication to achieve a peer review process that will protect effectively our patients.

I trust that you had a great time during your well deserved vacation and are now energized to face California's peer review complex issues.

Kindly, submit my opposition to your consideration at your meeting today at 1:30 PM and incorporate my letter into the legislative history of AB 655.

Unfortunately, after you accomplished a significant step forward last year with SB 700, AB 655 represents two steps backwards, as AB 655 conflicts with SB 700, authored by Senators Negrete McLeod and Aanestad, peer review - false 805 reports.

Under the law implemented through SB 700's passage in 2010, the Medical Board of California, MBC, is obliged to independently verify information contained in reports submitted by hospitals against a physician, 805 report, before the MBC can circulate it, or post it on the MBC's public website.

Unfortunately, AB 655 does the exact opposite, as it allows hospitals to transmit libelous information regarding a physician - without the physician's knowledge.

For instance, hospital A could send false information to hospital B and hospital B might then misuse this defamatory information to report the targeted physician to the MBC.

There is no doubt that the Consumer, our Patients, are harmed whenever good doctors who speak against the financial interests of hospitals are retaliated against.

Hence, unless AB 655 is amended, it will overload the MBC with false 805 reports, as more false information will be circulated.

Accordingly, contrary to the analysis of AB 655, it will have a significant adverse financial impact on the Budget of the State of California.

This unnecessary public expense will endanger patients, as it will divert limited resources of the MBC from investigating legitimate complaints against bad doctors.

AB 655, Section (e) is particularly troubling:

(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 (2), that is acceptable to the responding peer review body.

In other words, Section (e) permits a responding peer review body to VOLUNTARILY provide derogatory information to another hospital without the licentiate's knowledge, as for instance out of personal animus.

This specific loophole could be easily remedied by amending Section (e) as follows:

“The responding peer review body is ~~not obligated to~~ may not produce the relevant peer review . . . “

Presently, there are two versions of AB 655, a Senate and an Assembly version, that must be reconciled.

Would you, please, introduce this amendment, forthwith, at your meeting today ?

Vigorous opposition to AB 655 was expressed by prominent physicians and Consumers Advocates, see:

Letters to Elected Officials in Opposition to A.B. 655
(Hayashi), <http://allianceforpatientsafety.org/opposition-hb-655-hayashi.php>

As you know, AB 655 is a variant of AB 1235 (Hayashi) of 2010 the work product of the California Hospital Association, CHA, which was vetoed by Governor Schwarzenegger who stated, "I vetoed two bills on this subject last year, with a clear message for the interested stakeholders to work together, along with my Administration, on this extremely complicated and complex issue.", see:
<http://www.allianceforpatientsafety.org/letters-to-gov-schwarzenegger.php>

Clearly, there is still a lot of work to do to protect the consumer. In fact, AB 655 requires multiple amendments before it will reach its stated objectives.

Attached, please find, Dr. Frey's letter to Assemblymember Hayashi, dated august 10, 2011, in opposition to AB 655 and pointing out how flawed the medical peer review process is in California, <http://allianceforpatientsafety.org/frey-08-10-2011.php>.

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>

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To: Assemblymember Mary Hayashi
Fax: 916-319-3306
Date: 8/10/11
Re: Opposition to AB 655 unless Amended

Dear Assemblymember Hayashi:

I congratulate you for your efforts to protect patients from incompetent and dangerous doctors. However AB 655 can also have the opposite effect.

When I was in the practice of Radiation Oncology, I was on the staff of as many as eighteen hospitals at one time, from Burbank to Calabassas and from Encino to Newhall. So I have an insight into Hospital Staff Politics as good as any person's.

Since retirement I have run the Health Administration Responsibility Project, Inc. which has given me a unique view of the lengths that doctors, hospitals, and HMOs can go to maximize their income at the expense of patient welfare.

Unfortunately, not all doctors are Dr. Kildare. Hospital staffs are riven by ego, envy, greed, and competition. It is foolhardy to assume that "peer review" represents a cool-headed, objective review of the facts. When you factor in the influence of non-physician administrators, who lack even a semblance of constraint by a Hippocratic Oath, peer review becomes a powerful weapon against staff members who oppose dangerous medical practices or who support patients who complain or sue. Even nation-wide professional organizations have attempted to penalize members who testify for patients in malpractice suits. Even the Chief of Neurosurgery at UCLA was ousted from the American Neurological Society for being a plaintiff's witness.

Equally unfortunate is that we have no alternative to peer review for assessing physician competence. Therefore it is important that peer review be completely transparent, and the best way to do that is to be sure that an accused has open access to everything that is said about him, and a clear path to defending himself from malicious accusations.

It is important that AB 655 prevent patient injury by making sure that physicians who

blow the whistle or testify for patient plaintiffs or threaten local medical monopolies are not punished by hospital staffs.

AB 655 fails in this regard.

The use throughout the bill of the term “relevant peer review information” leaves it to the discretion of the staff what to send, and allows them to make their case seem stronger by suppressing exculpatory information. This is not a mere possibility, but has been recognized by the courts in several cases.

The bill should be amended to require the disclosure of the ENTIRE peer review file, including the testimony of the accused, not just the sections that uphold the decision.

The second problem with AB 655 is that it does not require concurrent disclosure by the sending hospital to the accused, putting him on notice of the dissemination of information about him, and giving him an opportunity to defend himself from scurrilous attacks. It should not be the responsibility of the receiving hospital to give this information to the doctor.

And, Third, although peer review obviously cannot work unless peer reviewers have absolute immunity to suit for what they say in peer review meetings, the hospital should be subject to penalties for improper procedures, such as failing to send an accused everything it sends the requesting hospital or regulatory agency.

Unless these changes are made, in many cases AB 655 will achieve precisely the opposite effect from that which you and I desire.

Although it may be beyond the purview of this bill, it would be very desirable to restrict the role of hospital staff peers to that of percipient witnesses, while having questions of guilt determined by a jury of truly independent doctors. Perhaps distant, non-competing hospitals could pair up to have their staffs act as juries for each others peer-review cases.

I urge you to consider these important amendments.

<signed electronically>

Harvey S. Frey MD PhD JD

