

**SB2728**

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

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

In reply, please refer to:  
File:

**Senate Committee on Health**

**SB 2728, RELATING TO TRAUMA**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**Friday, February 5, 2010**

- 1 **Department's Position:** The Department of Health strongly supports this Administration bill.
- 2 **Fiscal Implications:** None
- 3 **Purpose and Justification:** In Hawaii, trauma is the leading cause of death and disability for those
- 4 1-44 years of age. The Department has been charged in Section 321-22.5, Hawaii Revised Statutes, with
- 5 building a comprehensive statewide trauma system to address this public health problem. The trauma
- 6 system will consist of multiple emergency medical service agencies, hospitals, and committees formed
- 7 to review and improve the care provided to patients within the system.
- 8 Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees seek broad
- 9 participation within health organizations to produce improvements in patient care. This involves
- 10 personnel from various disciplines reviewing records of care that they did not themselves provide, and
- 11 making recommendations for improvement. Without protection from discovery, such reviewers would
- 12 potentially become involved in medical malpractice cases just because they reviewed the case.
- 13 Recognizing that this seriously affects voluntary participation, QA and PR committees within hospitals
- 14 and health maintenance organizations are currently protected from discovery by Section 624-25.5,
- 15 Hawaii Revised Statutes. It is important to note that all patient records and other material pertinent to

1 investigation of potential medical malpractice remain available; it is only the committee's deliberations  
2 and proceedings that are protected.

3         The Department seeks protections for QA and PR committees convened and conducted by the  
4 Department for the purpose of improving patient outcomes. Such protections will assure the full  
5 participation and broad involvement by the many key individuals and agencies needed to produce the  
6 best results from the statewide trauma system.

7         Thank you for the opportunity to testify on this bill.



LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LIEUTENANT GOVERNOR

STATE OF HAWAII  
OFFICE OF THE LIEUTENANT GOVERNOR  
**OFFICE OF INFORMATION PRACTICES**

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CATHY L. TAKASE  
ACTING DIRECTOR

To: House Committee on Health  
From: Cathy L. Takase, Acting Director  
  
Hearing: Friday, February 5, 2010, 2:55 p.m.  
State Capitol, Room 016  
  
Re: Testimony on S.B. 2728  
Relating to Trauma

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Thank you for the opportunity to testify regarding S.B. 2728. OIP takes no position on the substance of this bill, but is testifying to point out a technical problem and to express concerns regarding a broadly phrased confidentiality provision.

At page 5, lines 10-12, the bill provides that the information described in that section “is not subject to chapter 92F. . . .” The effect of this language would be not simply to provide confidentiality, but would bring the information entirely outside the requirements of the Uniform Information Practices Act (“UIPA”), chapter 92F. In other words, the department would have no obligation to acknowledge receipt of a request and provide a reason for its denial as generally required; it could simply ignore requests for records containing that information.

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA’s entire statutory scheme. OIP believes that, where the intent is to exempt certain records from disclosure, it is clearer and more appropriate to instead simply make the records “confidential.” Where a record is made confidential, it may be withheld from disclosure under an exception to the UIPA **and** it may be considered in an executive meeting, i.e., a closed meeting, under the Sunshine Law. See Haw. Rev. Stat. § 92F-13(4) (1993) (exception to disclosure provided for government records protected by statute from disclosure); Haw. Rev. Stat. § 92-5(a)(8) (exception to open meeting requirement provided to deliberate or decide a matter that requires consideration of information that is confidential by law). If the intent is to exclude this information from disclosure under the UIPA, OIP suggests the following amendment:

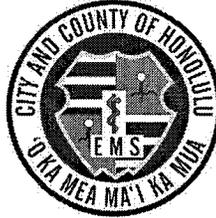
(e) Information held by the department as a result of patient care records and system performance reviews conducted under this part is not subject to chapter 92F, confidential and is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that patient care records and system performance review information otherwise available from other sources is not confidential or immune from chapter 92F, subpoena, discovery, or introduction into evidence through those sources solely because they were provided as required by this part.

In addition to the technical problem caused by exempting information from the UIPA's entire statutory scheme, OIP also has concerns about whether a confidentiality clause in this bill is justified. It is not clear why the UIPA's exceptions for privacy, for records protected by "other law" (which would include the HIPAA medical privacy rules), and perhaps other UIPA exceptions, would not be sufficient to appropriately protect medical records collected by DOH. The only sort of information collected under this bill that might conceivably be disclosable under UIPA exceptions and HIPAA would be de-identified records – either non-patient-specific compilations, or records from which all indications of a patient's identity had been removed – and those records would carry a strong public interest in how DOH was performing its oversight function.

Thank you for the opportunity to testify.

HONOLULU EMERGENCY SERVICES DEPARTMENT  
EMERGENCY MEDICAL SERVICES DIVISION  
**CITY AND COUNTY OF HONOLULU**

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1814  
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PATRICIA J. DUKES, MICT  
CHIEF OF EMS

WAYNE KRUSE, MICT  
T/A ASSISTANT CHIEF-OPERATIONS

VICKI L. BENTZIEN, RN  
ASSISTANT CHIEF-QA

February 2, 2010

Senator David Ige, Chair  
Senator Josh Green, Vice-Chair  
Members of the Senate Health Committee

**SUBJECT: SB 2728 RELATING TO TRAUMA**

Dear Senators Ige, Green, and Members of the Senate Health Committee,

I am Patricia J. Dukes, Chief of Emergency Medical Services (EMS). I am here to testify in **STRONG SUPPORT OF SB 2728 RELATING TO TRAUMA.**

City and County of Honolulu EMS paramedics use feedback for learning and understanding the injuries associated with a trauma patient. This bill will allow the Trauma System protection from discovery; thereby, EMS paramedics and the Trauma System may have open and honest discussion of quality issues related to the delivery of trauma care.

Thank you for this opportunity to testify in support of SB 2728 Relating to Trauma.

Sincerely,

Patricia J. Dukes, MICT  
Chief of EMS



# THE QUEEN'S MEDICAL CENTER

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 538-9011 • Fax: (808) 547-4646

Senator David Y. Ige, Chair  
Senator Josh Green, M.D., Vice Chair  
**SENATE COMMITTEE ON HEALTH**

February 5, 2010 – 2:55 p.m.  
State Capitol, Conference Room 016

**Re: SB 2728, Relating to Trauma**

Chair Ige, Vice Chair Green, and Members of the Committee,

My name is Caesar Ursic, MD, FACS, Trauma Medical Director for The Queen's Medical Center. I am testifying for The Queen's Medical Center in support of the establishment of statewide emergency and trauma system multiagency and multidisciplinary quality assurance and peer review committees convened and conducted by the department of health for the purposes of improving patient care, that have similar protections as those committees formed by hospitals and health maintenance organizations.

One of the cornerstones of modern medical care is an effective quality assurance program. Such a program must entail a recurrent, methodical and collaborative examination of actual patients and the treatments that they receive, both at an individual and systems level. This will then allow caregivers to identify problems and correct them as well as to improve upon already effective care.

The concept of a Trauma Multidisciplinary Quality Assurance (QA) and Peer Review (PR) process is one that has been validated by multiple national and international studies of trauma care as essential to improving outcomes. In other words, trauma systems with effective QA and PR programs save more lives than those without them. In a trauma system such as exists in Hawaii, *statewide* QA and PR committees would allow for the collection of reliable data, the ongoing and systematic analysis of trauma outcomes, the provision of feedback to participating trauma centers, hospitals and practitioners, and the identification of local or state-wide opportunities for improvement. All of these would result in higher survival and diminished disability for patients sustaining serious injuries in Hawaii.

Hawaii Revised Statutes, Section 624-25.5, recognizes the importance of protecting QA and PR committees within individual hospitals and health maintenance organizations from discovery. In order to encourage the honest, open and voluntary participation in statewide QA and PR committees, it is crucial to establish similar protections for statewide QA and PR committee members.

Thank you for the opportunity to testify.



SENATE COMMITTEE ON HEALTH  
Senator David Ige, Chair

Conference Room 016  
Feb. 5, 2010 at 2:55 p.m.

**Supporting SB 2728.**

The Healthcare Association of Hawaii represents its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. Thank you for this opportunity to testify in support of SB 2728, which protects information used by multi-agency quality assurance and peer review committees created by the Department of Health from being used in lawsuits.

The continuous improvement of the quality of health care requires physicians, nurses, and other health care practitioners to collaborate and to discuss events involving patients. Participants in the discussion must be able to speak freely among themselves without fear of reprisal so that they will not be afraid of raising relevant issues. These discussions often results in changes to procedures that improve patient safety.

Hawaii's statutes recognize the importance of what is known as the peer review process, and protects information used in this process from being used in lawsuits. Currently the peer review process is limited to being used by individual organizations.

The Department of Health has been charged with developing and maintaining a statewide trauma system, among its emergency care services responsibilities. Since a trauma system and emergency care system involve multiple organizations, peer review protections should be extended to committees with representation from these various organizations. By allowing the Department of Health to create multi-agency committees with peer review protections to discuss trauma care and emergency care, this bill facilitates the development of trauma care and emergency care in Hawaii.

For the foregoing reasons, the Healthcare Association supports SB 2728.



AMERICAN MEDICAL RESPONSE®

February 5, 2010

The Honorable Senators  
David Ige, Health Chair  
Josh Green, Vice Chair  
State Senate, Hawaii State Capitol  
Honolulu, Hawaii 96813

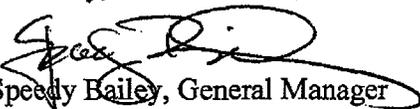
RE: SB 2728 Relating to Trauma

  
Dear Chair Ige:

American Medical Response respectfully supports the passage of SB 2728. In Hawaii, trauma is the leading cause of death and disability for 1-44 years of age. As such, a trauma system consists of multiple emergency medical service agencies, hospitals, and committees formed to review and improve the care provided to patients within the system. Multidisciplinary Quality Assurance (QA) and Peer Review (PR) committees involve broad participation with health organizations to produce improvements in care. This process relies on participation from individuals from various disciplines to review records for care that they did not themselves provide. Without protection from discovery, such reviewers could potentially become involved in medical malpractice cases. This potential adverse outcome seriously affects voluntary participation in QA and PR committees. The protection this bill affords will enable participation and broader involvement by individuals and agencies needed to produce the best results from a statewide trauma system.

Thank you very much for this consideration. Please feel to contact me @ 487-4900 if you have any further questions.

Sincerely,

  
Speedy Bailey, General Manager  
American Medical Response

February 2, 2010

Senator David Ige, Chair  
Senator Josh Green, Vice-Chair  
Members of the Senate Health Committee

Re: SB 2728 Relating to Trauma

Dear Senators Ige, Green, and Members of the Senate Health Committee:

I am Wendi Wagner, RN, BA, MN, Trauma Program Coordinator at Kona Community Hospital testifying in support of SB 2728.

The Hawaii Comprehensive Statewide Trauma System's success depends heavily on inter-agency communication regarding the trauma patient care continuum between the pre-hospital agencies (Emergency Medical Services, American Mobile Response), initial emergency departments (Kona Community Hospital, North Hawaii Community Hospital, Hilo Medical Center), the aero-medical transport agencies (Hawaii Air Ambulance, Life Flight, Airmed), and the definitive trauma care facility (The Queen's Medical Center, Maui Memorial Hospital).

To ensure that the trauma patient receives appropriate care at all stops along the trauma patient care continuum, the agencies involved must work together as one team. To improve the trauma patient care continuum, all the players must be involved in protected trauma patient review sessions. These sessions will allow all agencies a face-to-face interaction to review trauma patient records and discuss issues, concerns, suggestions and overall, provide the trauma system agencies with opportunities to improve Hawaii's trauma patient care services.

Sincerely,

Wendi Wagner, RN, BA, MN  
Trauma Program Coordinator  
Kona Community Hospital  
79-1019 Haukapila Street  
Kealahou, HI 96750  
808-322-4593  
wwagner@hhsc.org

February 3, 2010

Senator David Ige, Chair  
Senator Josh Green, Vice-Chair  
Members of the Senate Health Committee

Re: SB 2728 Relating to Trauma

Dear Senators Ige, Green, and Members of the Senate Health Committee:

We write to you as Pediatric Surgeons at Kapi'olani Medical Center for Women and Children, testifying in support of SB 2728.

Multidisciplinary quality assurance and peer review committees are an integral part of improving health care provided to patients. They provide an open, confidential arena for possible unintentional errors in judgement or management of a patient's care to be discussed in an effort to avoid similar mistakes in the future. As stated in SB 2728, the importance of protecting this process from discovery is recognized in Hawai'i by statute and should be extended to include statewide emergency and trauma system quality assurance and peer review processes as well. A failure to guard these processes from discovery would likely discourage participation in the care of trauma patients and incapacitate our newly forming statewide trauma system. As this system evolves and matures, protecting the integrity of these reviews is extremely important in our efforts to improve the outcomes of injured patients in Hawai'i.

Respectfully submitted,

Devin Puapong MD  
Pediatric Surgeon - Kapi'olani Medical Center for Women and Children  
Assistant Clinical Professor of Surgery - University of Hawai'i, John A. Burns School of Medicine

Sidney Johnson MD, FACS  
Pediatric Surgeon - Kapi'olani Medical Center for Women and Children  
Assistant Clinical Professor of Surgery - University of Hawai'i, John A. Burns School of Medicine

Russell Woo MD  
Pediatric Surgeon - Kapi'olani Medical Center for Women and Children  
Assistant Clinical Professor of Surgery - University of Hawai'i, John A. Burns School of Medicine

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2010 4:45 PM  
**To:** HTHTestimony  
**Cc:** egreenia@hhsc.org  
**Subject:** Testimony for SB2728 on 2/5/2010 2:55:00 PM

Testimony for HTH 2/5/2010 2:55:00 PM SB2728

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Earl Greenia  
Organization: Kona Community Hospital  
Address:  
Phone:  
E-mail: [egreenia@hhsc.org](mailto:egreenia@hhsc.org)  
Submitted on: 2/3/2010

**Comments:**

Hawaii's statewide trauma system's success depends heavily on inter-agency communication regarding the trauma patient care continuum between the pre-hospital agencies, hospitals and aero-medical transport agencies. To improve patient care, all players must be involved in protected trauma patient review sessions.

**From:** Ember Shinn [embershinn@yahoo.com]  
**Sent:** Thursday, February 04, 2010 8:36 PM  
**To:** HTHTestimony  
**Subject:** SB2728 Testimony, HTH hearing 2/5/10, 2:55 pm

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF  
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) FORMERLY KNOWN AS  
CONSUMER LAWYERS OF HAWAII (CLH)  
IN OPPOSITION TO S.B. 2728**

February 4, 2010

HTH Hearing: February 5, 2010, 2:55 pm

TO: Chairman David Ige and Members of the Senate Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to S.B. No. 2728 Relating to Trauma.

This bill allows the DOH to establish multidisciplinary, multiagency quality assurance and peer review committees exempt from the State sunshine laws to analyze, evaluate and improve the statewide trauma system and services to the public. Members of the committee will review patient care records and system performance and make recommendations to the DOH. With some limited exceptions, members are exempt from being questioned in any civil or criminal proceeding regarding information presented or opinions formed in the review. Information held by DOH as a result of the committee's review is not subject to disclosure under the State Information Practices Act and civil or criminal discovery proceedings.

HAJ recognizes the need to have a comprehensive statewide trauma system and particularly government support for trauma centers faced with under compensation or no compensation for emergency care services provided to uninsured or underinsured victims of injuries. When the Legislature created a special fund for this purpose in 2006 (Act 305, SLH 2006, codified at HRS Section 321-22.5), the Legislature signaled a clear intent to bolster financial support for trauma centers. According to the latest DOH report to the Legislature dated October 2009, the Trauma System Special Fund has finally received approximately \$4.7 million in revenues to carry out the legislative mandates. Of this amount, the DOH has expended approximately \$1.2 million primarily to develop the comprehensive statewide trauma system. Unfortunately, the DOH's annual report does not detail the activities undertaken for these expenditures and its progress toward implementing the statewide program.<sup>1]</sup>

Without further information about the progress toward implementing the statewide comprehensive trauma system and the need to create a multidisciplinary, multiagency review committee whose activities will be shrouded in secrecy, exempt from the State Sunshine laws and all civil and criminal discovery proceedings, HAJ finds it difficult to support the Governor's proposed legislation. At best, the proposed bill is premature in the absence of sound justification for the creation of a new entity or entities during this time of fiscal austerity. At worst, the creation of a new entity or entities that operate in secrecy to advise the DOH in its regulatory and oversight mission is questionable public policy. Today, the trend in most states is toward transparency in health care and medical practices. That is why over 29 states have enacted "sorry" laws and require health care providers to disclose medical errors. This proposed bill appears to be a step backward, bucking the national trend.

HAJ has other concerns about this bill. Specifically,

- The multidisciplinary, multiagency committee will be composed of members of the trauma care facilities who are the direct beneficiaries of the trauma system special funds. Does this ensure adequate checks and balances for monitoring of the expenditure of the funds?
- The terms “peer review” and “quality assurance” committee are not defined in this proposed legislation. However, these terms are defined in HRS sections 624-25.5 and 663-1.7. The statutory definitions in existing law do not appear to be applicable to the committees formed under the proposed legislation and could result in unintended consequences.
- The intent and purpose behind allowing “peer review” and “quality assurance” committees in a private hospital or health care organization to operate free from public disclosure is to reduce risks and losses in direct patient care services. In contrast, governmental entities are required to operate in public, implement policies benefiting the public at large and are held accountable for the expenditure of public funds. Thus, the very nature of a private organization’s “peer review” and “quality assurance” committee appears contrary to the public purpose of a governmental regulatory agency.

In conclusion, HAJ has concerns about this proposed bill and suggests that further information is necessary to evaluate the merits of whether a review body that operates in secrecy is necessary to carry out the Legislature’s mandate to create a statewide comprehensive trauma system. Thank you for the opportunity to testify.

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<sup>i11</sup> This apparent deficiency may be explained by the inconsistency between HRS Section 321-22.5 that directs the DOH to report on expenditures and revenues of the fund and Act 305, SLH 2006, §7 that specifies “The department of health shall submit to the legislature an annual report on the expenditures of the trauma system special fund and the progress toward developing a fully-integrated statewide trauma system...”

<sup>i11</sup> This apparent deficiency may be explained by the inconsistency between HRS Section 321-22.5 that directs the DOH to report on expenditures and revenues of the fund and Act 305, SLH 2006, §7 that specifies “The department of health shall submit to the legislature an annual report on the expenditures of the trauma system special fund and the progress toward developing a fully-integrated statewide trauma system...”