

SB2776

Testimony
of
Tony L. Sagayadoro

LATE

Before
Honorable David Ige, Chair; Honorable Josh Green, Vice Chair
and the Honorable Members of the SENATE COMMITTEE ON HEALTH

Honorable Rosalyn Baker, Chair; Honorable David Ige, Vice-Chair
and Honorable Members of the SENATE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION

Public Hearing
9:00A.M. Tuesday, February 9, 2010 Conference Room 229

RE: Testimony in strong opposition to SB 2776 – Relating to Anatomical Gifts

Hon. David Ige, Chair; Hon. Rosalyn Baker, Chair; and members of the Senate Committee on Health and Senate Committee on Commerce and Consumer Protection

I am Tony L.Sagayadoro, Program Coordinator of MOTTEP of HONOLULU (Minority Organ Tissue Transplant Education Program) and a kidney transplant recipient, 2000. I am testifying on behalf of the MOTTEP of Honolulu Advisory Board. I appreciate the opportunity to express our views regarding SB 2776 which requires OPO and transplant hospitals to procure and transplant medically suitable organs. Imposes administrative fees and loss of accreditation for failure to comply

WE strongly opposed the passage of SB 2776 for the following reasons:

- WE believed that Organ Procurement Organizations, Transplant Centers, medical facilities and transplant professionals are highly regulated and strictly administered by government agencies for strict compliance
- HB 2661 will only discourage transplant professionals to practice related to organ transplantation and will add to the shortage in an already limited pool of transplant professionals in this very stressful field

WE applaud the introduction of SB 2776, if the intent were to increase the number of organ for transplant, however, by implementing SB 2776 as written and for the reasons stated above will only hurt OPO's, medical facilities and transplant professionals and in the long term will have an adverse effect to the patient waiting for transplant and the only OPO and Transplant Center in the state.

WE therefore, humbly ask you not to pass SB 2776.
Thank you.

Respectfully,

Tony L. Sagayadoro

(808) 368-8753

Testimony
of
Stephen A. Kula, Ph.D., NHA

Executive Director, Organ Donor Center of Hawaii
Before

Honorable David Y. Ige, Chair; Honorable Josh Green, Vice Chair
and the Honorable Members of the SENATE COMMITTEE ON HEALTH
Public Hearing

9:00A.M. Tuesday, February 9, 2010 Conference Room 016

RE: Testimony in strong opposition to SB 2776 - Relating to Anatomical Gifts

All facilities and transplant professionals are heavily regulated and strictly administered by government agencies for strict compliance. Specifically the Center for Medicare and Medicaid Services (CMS) section Z150 of the Interpretive Guidelines for OPOs outlines the requirements for donation rates in order to maintain CMS certification and sections Z153, 154, and 155 outline the requirements for the number of organs recovered for transplantation or research.

Fear of prosecution and loss of licensure as outlined in the bill will discourage professionals such as surgeons, critical care nurses, and organ procurement professionals from participating in this life saving process.

I appreciate the introduction of SB2776 if the intent were to increase the number of organ for transplant, however, by implementing this bill for the reasons stated above will only hurt OPO's, medical facilities and transplant professionals and in the long term that will have an adverse effect on transplantation in the State.

I therefore, humbly ask you not to pass SB2776. Thank you.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2776, RELATING TO ANATOMICAL GIFTS.

LATE

BEFORE THE:

SENATE COMMITTEES ON HEALTH AND ON
COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, February 9, 2010 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Blair Goto, Deputy Attorney General

Chairs Ige and Baker and Members of the Committees:

The Department of the Attorney General provides the following comments on this measure. The Department supports enforcement of the existing laws pertaining to anatomical gifts; however, if this bill is passed, we respectfully request that it be amended to address the following concerns.

This bill would establish individual liability for statutory damages of \$500,000 and attorney's fees for each entity, organization, employee, agent, or affiliate that fails to retrieve an anatomical gift that has passed to an entity or organization pursuant to section 327-11, Hawaii Revised Statutes. The statutory damages would apply to each incident in which a failure to retrieve an anatomical gift occurs. In addition, the bill would provide for revocation of the license to perform in the medical field of each entity, organization, employee, agent, or affiliate that fails to retrieve an anatomical gift. Moreover, the bill would authorize any individual or entity that is on a wait list to receive an anatomical gift to bring suit to enforce these remedies.

The remedies created by this bill are severe. First, the statutory damages amount of \$500,000 should be flexible or left

for a court's determination based on the amount of damages caused by the conduct. The bill makes no provision for a range of statutory damages with lesser amounts for those who inadvertently fail to retrieve an anatomical gift and with greater amounts for those who intentionally or repeatedly fail to retrieve a gift.

Second, there are no exceptions to liability and license revocation even in situations where the failure to retrieve an anatomical gift may be reasonable. For example, if the organs or tissues that should be retrieved are not medically suitable or if there is a good faith belief that the donor has not made the gift effectively or has made a refusal that has not been revoked, liability and license revocation should not result. Nor is there an exception made for religious beliefs that contravene the retrieval of anatomical gifts.

Third, the bill authorizes a very broad group--"any individual or entity who is on a wait list to receive an anatomical gift"--to bring suit. There is no requirement of alleged damages being caused by the misconduct or failure to act. Nothing in the bill would prevent an individual on the wait list to receive a kidney, for example, from bringing suit for the failure to retrieve a different organ or a tissue. In addition, there is no provision in the bill to address the situation if more than one wait listed individual or entity brings suit for one instance of a failure to retrieve an anatomical gift. Moreover, there is nothing in the bill that would prevent one individual on a wait list from recovering an award of statutory damages for multiple failures by the same or separate entities, organizations, employees, agents, or affiliates to retrieve separate anatomical gifts.

Last, the bill provides for attorney's fees and legal costs to an individual or entity that brings a suit and fails to prevail. The only exception to an award of attorneys' fees that the bill provides is if the court determines that the lawsuit was brought in bad faith. While the bad faith exception is helpful, there may be many cases that fail but are not brought in bad faith. The costs to defend these lawsuits may be very high.