

- Fax Transmission

To: Gil

From: Harvey S. Frey MD PhD JD

Fax: +1 (310) 3822412

Date: 8/10/2011

RE: Opposition to AB 655

Pages: 3

Comments:

Please include in Legislative Record

Health Administration Responsibility Project, Inc.

Harvey S. Frey MD PhD Esq., Director
552 12th St. Santa Monica, CA 90402-2908
(310) 394-6342 fax: (310) 393-2579
hsfrey@harp.org www.harp.org

To: Assemblymember Mary Hayashi
Fax: 916-319-3306
Date: 8/10/11
Re: Opposition to AB 655, for inclusion in Legislative Record

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 qualified 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, so that we may reap the benefits you intended.

<signed electronically>
Harvey S. Frey MD PhD JD