



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, as it Compromises our Patients' Safety by Promoting the "Code of Silence"

Sent by Fax to: [916-319.33.06](tel:916-319-3306) and E-mail, on August 16, 2011.

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

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

Honorable Assemblymember Hayashi,

Kindly, include the attached Action Alert issued by the Association of American Physicians and Surgeons, AAPS, on August 15, 2011, into the legislative history of AB 655.

The Association of American Physicians & Surgeons, Inc. (AAPS) is a non-profit, national group founded in 1943 and consisting of thousands of member physicians, including many in California. AAPS is dedicated to defending the patient-physician relationship and opposing hospital disciplinary procedures, which disrupt that relationship contrary to law.

Appellate courts, including the U.S. Supreme Court, have found AAPS amicus briefs useful see, e.g., Springer v. Henry, 435 F.3d 268, 271 (3d Cir. 2006) (citing an AAPS amicus brief in the first paragraph of its decision), for more information, go to: <http://www.aapsonline.org/>

I, hereby, incorporate herein all the letters you received to date in opposition to AB 655 posted on our website, under:

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



Association of American Physicians and Surgeons, Inc.
A Voice for Private Physicians Since 1943
Omnia pro aegrotis

1601 N. Tucson Blvd. Suite 9
Tucson, AZ 85716-3450
Phone: (800) 635-1196

Dear AAPS members and friends,

Please contact your California state Assembly Member and Senator and ask them to oppose [AB 655](#) as written. Below is a sample letter that outlines the problem with the bill and suggests a proposed amendment.

You can find your legislators' contact information at <http://www.leginfo.ca.gov/yourleg.html> and read the text of the bill by [clicking here](#).

We would appreciate if you let us know who you contacted and what you told them. You can reply to this email or write us at aaps@aapsonline.org.

It would also be helpful if you could FAX your letters to AB 655 sponsor Assemblymember Hayashi
Fax: 916-319-3306 with copy to AFPS Fax: 310-382-2412.

Thank you!

Opposition to AB 655

- Sample Letter to CA's Senators and Assembly members

Honorable Senator - Assembly Member,

Please, include my letter into the legislative history of AB 655.

AB 655 conflicts with SB 700 (peer review/false 805 reports, Negrete McLeod/Aanestad).

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, i.e. 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, since more false information will be circulated.

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 **MAY NOT** produce the relevant peer review information ... unless ...both of the following conditions are met:"

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 ?

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>.

If amended in the Assembly, AB 655 will then have to return to the Senate, or turned into a two year bill.

Alternatively, if AB 655 dies this year, it might be best.

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

Respectfully submitted,

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 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