From: Charles Phillips, M.D.,
To: Assemblymember Mary Hayashi
Sent by Fax: 7/25/2011
Subject: AB 655 – A Viewpoint from a Federal Whistleblower MD

To: The Honorable Mary Hayshi – Chair – California State Assembly Committee on Business, Professions and Consumer Protection (Fax 916-319-3306):

Subject: OPPOSITION TO AB 655

My name is Charles Roy Phillips, MD a senior who is also a full time, practicing physician in the San Joaquin Valley. I see myself now as a federal whistle blower in health care. I have done this for free for twenty-five years and now do so half time for free and half time for the federal and/or state reward. I was most recently (this Spring) published in Drug Topics out of Ohio – maybe going out to 15,000 pharmacists – on the topic of pill splitting (**not pill halving – but pill wrecking**) in which the California Pharmacy Board is the problem; the European FDA will soon be the solution. This splitting into uneven fragments is a long term cost to California as illnesses are not treated and fall later to government entitlements. Pill splitting is also a good biopsy of the physician "group ethic" (no ethic at all but an MD retirement scheme) that wrestles daily with the Hippocratic Oath.

For potential reward (federal and multi-state), I wander through the **target rich environment** of such evils as co-branding health plan/MDs to confuse the public about profit (like "Kaiser Permanente"), religious health care disowned by the central health mission (as CEO salaries too high like in Adventist Health "Care"), upcoding of bills around the country, the Supreme Court's warning that HMOs are the "creature of Congress," medical record tampering after bad outcome (rampant in almost every hospital – in "Risk I"), and sham peer review for economic gain. The list goes on – never a dull moment.

I even see – as a consumer of health care at times – that each hospital lies on its mandatory sign in paper by saying that the hospital is simply a charity of hallways, beds, and nurses – completely independent from the physicians. Internal contracts (secret business documents) show that is not true. And a "non-profit" hospital need only be 51% non-profit. Also, the mandatory patient "rights" poster on the hospital wall gets weaker every year as the patient "responsibilities" get longer (the latter not within the Oath). Kaiser physicians – before leaving Kansas – were part of the "Mid-West Bioethics Committee" that helped wreck this standard paper with the Joint Commission giving up on its ethics own book.

I am unpopular within the flow of money toward those milking the medical system. For example, when the article on hospital chart tampering came out as a front page issue in the USA TODAY in 2008 naming me as the [unpaid] consultant, two hospitals briefly tried to find reasons to get me off staff – the same day. After a brief conversation that I had with them – that the (then) largest circulation newspaper in the US (going out to

sixty countries) might want to talk about retaliation on physicians making the system transparent – both hospitals retreated. The newspaper did pull the second story on East Coast tampering (already written), and the reporter left the paper. Such is the influence of hospitals on ethics – whether or not that hospital is dripping in religious symbols.

Generally, I look for **federal** intervention in this state of "Kaiser-fornia" (my word), because our state has so hopelessly sold out the patient at every turn and from the top. The average California patient would, for example, assure you that Anthem Blue Cross is non-profit organization. But that was the purpose of the billion dollar (?) buyout of the non-profit name "Blue Cross" during the conversion years ago **to for-profit Anthem. Now, about$1 billion a year being sent to Indiana in profit to help fund the WellPoint, Inc. CEO (? Lear jet).**

The average California patient would also assure you that Permanente physicians are just salaried, like to eat broccoli, and share their treatment strategies online. Such patients miss that these physicians really split the Health Plan profit ($3 billion in 2007) and are set up for immense, salary-equivalent vesting retirements for life. They are – to get this money – required to always support (even to you) the Health Plan's "expansion." They are direct creditors to the Health Plan and must also be patients for life. That is why they also have a shadow control of the Plan.

Similarly, the average Blue Shield patient hears "non-profit" and has no idea that the physician groups – giant Independent Practice Associations (not independent at all) – join in the Blue Shield risk of MD cost, testing cost, and medication cost. In this way, the MDs share the "risk" profit – generally the Kaiser formula (50% of every dollar saved). And when the legislature does step in – the Department of Insurance splitting off the Department Managed Health Care (DMHC) – the latter is given a bipolar assignment of patient protection and physician group solvency. Only the protection of MD solvency can lead to a future career as the DMHC leaders leave. Meanwhile, government – like your committee – is mocked by the HMOs as the one eyed giant throwing rocks at Ulysses – the modern IPA fleet (Click here: http://businesspractices.kaiserpapers.org/pdfs/permmap.pdf).

So in the middle of all of this failing healthcare, I spend most of my time interacting with **federal** sources, thus leaving Sacramento to shoot itself in each toe in the name of patient care. In fact, I am sure that should all of the anti-patient yokes be cast off, there would suddenly be less MD retirement money in the Bahamas and more medical care (**read as more jobs in California**). Occasionally, however, there is a state issue in California which I choose to address with a certain urgency. In 2011 it appears that I need to revisit Sham Peer Review.

My first experience with Sham Peer Review was in 1980 when I officially noted that one physician was giving out too much vicodin. As the director of the Methadone Clinic (and many other programs), I could not sit by and watch it. The review of this economically useful MD was a sham (in letting him off), and I was told that I was no longer the first

choice to be the next Medical Director of this huge system. The post of County Health Officer was still open should I like my weekends off. Having just completed a textbook for paramedics, I did not want to become a health officer. I became board certified in family medicine and emergency medicine about then - doing some of each since. The lesson was that physicians are viewed by hospitals as cost centers rather than ethic centers. Good cost centers stay; and sometimes the best MDs are asked to leave.

This year I will be involved in the topic of Sham Peer Review both through this email-letter to you (in Sacramento) [I am available free to your committee if needed] and as an expert witness in a federal court (a volunteer role in a maturing case). In the latter case a rural hospital's "Medical Advisory Committee" (read as group of MD friends) tossed out the Medical Staff Bylaws for ten years, reformulated the MD voting list (changes never approved by the Board), held lunch meetings that deputized non-hospital practicing friend MDs to vote in Peer Review, and otherwise wrecked a new hospital budget (tax initiative) as well. The grand jury has come to watch - invited in by me. When it is over, this federal case court battle will be a textbook case of how **not** to do Peer Review (physician targeting). The hospital according to a meeting this week may have to sell itself to the Adventists for permitting such shady dealings. [Most likely the Adventists hospital leaders were loaning them money for lawyers to conduct this attack.]

The trouble is that Sham Peer Review is about the only "peer review" that I see going on. It is particularly troubling in Kaiser where a physician wishing to leave the partnership can expect sudden false charges. The little secret is that each Permanente physician looks forward to a retirement - funded by the Health Plan - worth about $2 million. Should the partnership be able to knock out a partner with a complaint or make the work schedule impossible (like a two hour commute each way), then the Permanente partnership gets to split the money already pledged by the Health Plan to that physician. Secondly, the leaving partner might well become the perfect legal expert messenger reflecting all of the anti-patient policies within, like not testing for diabetes in heavy patients. And the partners have no contract with Permanente - only the "contract" of applying to Permanante as a small box on the hospital application in the beginning. Thus a war often occurs - in which I am sometimes called upon to be the expert (subject to a secrecy contract of its own) - as the "partner" wants to get outside this group (like The Firm).

AB 655 appears to endorse hospitals communicating with one another about such sham processes without the doctor so previously targeted knowing what is sent and why. The wording - as suggested by Senior Counsel Jeffrey White of Washington, D.C. - might be one fix of the bill - [jeffrey.white@cclfirm.com]. As to the California Medical Association (CMA) working on this bill for years, I would point out that some of what the CMA does is simply a big help to Permanente. And, as the Health Plan also pays for the CMA dues of all partners (since 1957), **patients** through their health care premiums empower massive MD representation on the CMA by the 9,000 or so Permanente physicians in this state (75% of all of Kaiser).

Perhaps the CMA might decide if medical practice guidelines coming out of Oakland should influence care in Washington, DC, **where the frontline physician cannot print out the pressures applied from within the "work station" computer.** And, I would welcome the CMA to join in with me on topics like pill splitting, medical record tampering, co-branding so profit merges with non-profit, etc. which are all patient-centric issues.

But, then, I recall my first TV show may have been the black and white screen version of the Lone Ranger. And I liked Last Samurai Standing.

Thanks in advance for your time.

Chuck Phillips MD

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Fax copy to Alliance for Patient Safety – 310-382-2412