

SB 1220



February 23, 2009, 3:00 p.m. in Room 016

To: Senate Committee on Health
Senator David Y. Ige, Chair
Senator Josh Green, MD, Vice Chair

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

By: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

Re: SB1220 RELATING TO THE HAWAII MEDICAL BOARD

OFFICERS

Gary Okamoto, MD
President

Robert Marvit, MD
President Elect

Cynthia Jean Goto, MD
Immediate Past President

Thomas Kosasa, MD
Secretary

Jonathan Cho, MD
Treasurer

April Donahue
Executive Director

Chairs & Committee Members:

HMA respectfully opposes SB1220 in the interest of public safety.

The Hawaii Medical Board was constituted to protect the public from medical professionals who do not meet the well-accepted standards of care. Limiting the Board in this manner would dangerously inhibit their ability to carry out this objective. We strongly believe that patients will die or be seriously injured if this measure is passed in its current form.

Because of the advent of new medical technologies and procedures, it is very necessary for the Hawaii Medical Board to continue to have the authority to issue directives to the medical field regarding these additions that have not been vetted in other states, as a basic public safety measure.

Thank you for the opportunity to testify.

Hawaii Medical Association
1360 S. Beretania St.
Suite 200
Honolulu, HI 96814
(808) 536-7702
(808) 528-2376 fax
www.hmaonline.net

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE SENATE COMMITTEE ON HEALTH

AND

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION of 2009

Monday, February 23, 2009
3:00 p.m.

TESTIMONY ON SENATE BILL NO. 1220, RELATING TO THE HAWAII MEDICAL BOARD.

TO THE HONORABLE DAVID Y. IGE, CHAIR, AND
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Maria Patten and I am the Vice-Chair and an osteopathic physician member of the Hawaii Medical Board ("Board"). I would like to thank you for the opportunity to provide testimony on S.B. No. 1220, Relating to the Hawaii Medical Board. The purpose of this bill is to require the Board to adopt rules in accordance with the administrative procedure law, prohibit the issuing of statements that prescribe, interpret, or implement law or policy that lack a sound and demonstrable source of statutory authority and make such statements void as against public policy.

The Board apologizes for any misunderstanding that has arisen as a result of guidelines it has issued. We understand that there were prior bills resulting in amendments to the Insurance Code which recognized telemedicine. However, we were not aware of these measures until December 2008, after an entity brought an issue relating to telemedicine to the Board's attention in September 2008.

Having been made aware of these recent amendments to the Insurance Code, the Board has been in discussion with the entity that raised the telemedicine issue with us in September 2008, to find common ground as to the circumstances in which a physician may treat a patient safely over the internet without having to perform a physical examination or take vital signs.

With that in mind, the Board asks that this bill be held and the parties be allowed to resolve the matter.

Should the bill be passed out as drafted, we would be concerned with unintended consequences that would result because of this action.

While the Board has gone through the rulemaking process, we have also exercised our authority with regard to issuing informal interpretations. Pursuant to HAR §16-201-85, relating to the purpose, scope, and construction of informal interpretations, "any board or commission may issue informal interpretations in addition to and supplemental to any power to grant declaratory relief provided for elsewhere in this chapter. The purpose of this Subchapter is to facilitate prompt decision making in matters where no formal ruling is desired or needed by any person and where the interpretation can be stated without the necessity of an evidentiary hearing and without consideration of legal arguments."

Pursuant to HAR §16-201-85, the Board has helped entities such as the U.S. Food and Drug Administration ("FDA") when it sought guidance regarding physician-patient relationships a few years ago. The Board's informal guidelines regarding

physician-patient relationships greatly contributed to the FDA's investigation of certain physicians who were prescribing over the internet.

Another entity that we have helped is the Queen's Medical Center ("Queen's"). Queen's had written to the Board asking for assistance in interpreting the scope of practice of podiatrists. After careful review and deliberation, we were able to provide an informal interpretation to Queen's.

Organizations are not the only ones who have benefited from the Board's issuance of informal interpretations. Consumers, licensees, and applicants have asked for our opinions on numerous matters, such as biofeedback, the use of lasers, the acceptance of an examination, etc.

Without the ability to provide informal interpretations and issue statements or guidelines, the Board would only be able to offer aid through formal administrative proceedings such as rulemaking or declaratory judgments which are involved and cumbersome procedures. While the Board does not dispute the merit of these procedures, most issues brought before us do not need evidentiary hearings and consideration of legal arguments. Nor, might we add, are formal rulings or legally binding rules desired by those requesting the Board's assistance as they are usually looking for an immediate or timely response from the Board.

With respect to interpreting or implementing law or policy, prohibiting the Board from engaging in these functions would eviscerate its ability to implement, for example, HRS §453-4 (whether an applicant is qualified for licensure) and HRS §453-8 (the grounds to deny or discipline a license). The Board would be prohibited from

implementing HRS §453-4 in evaluating an applicant's qualifications for licensure and likewise be banned from implementing HRS §453-8(a)(7) in considering whether an applicant's or licensee's behavior fell within the parameters of professional misconduct. Interpreting and implementing these provisions, among others, allows us to consider whether certain behavior constitutes professional misconduct and to take appropriate action, including approving, denying, or conditioning a license.

With respect to delineating, prescribing, proscribing or restricting practice requirements, prohibiting the Board from engaging in these functions would similarly constrain the Board's ability to limit the scope of practice of an impaired physician, for example. Prohibiting the Board from the activities listed in lines 9 through 12 on page 3 severely restricts the Board's operational abilities, particularly those regarding the fitness of an applicant or licensee to practice medicine.

In issuing informal interpretations or while interpreting or implementing the law in licensing, disciplining, or other matters within its jurisdiction, the Board is well aware that it must do so within the parameters of statutory authority. Prohibiting the Board from these actions or requiring the adoption of rules for every decision, as this bill would do, would make it impossible for the Board to perform its consumer protection role and carry out its legislatively mandated duties.

In light of our ongoing discussion and collaboration with the affected entity and the concerns expressed above, the Board respectfully requests that this bill be held.

Thank you for the opportunity to provide comments on S.B. No. 1220.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

LATE

February 23, 2009

The Honorable David Ige, Chair
The Honorable Rosalyn Baker, Chair
Senate Committees on Health and Commerce and Consumer Protection

Re: SB 1220 – Relating to the Hawaii Medical Board

Dear Chair Ige, Chair Baker and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1220.

HMSA supports this measure to ensure that the Legislature's intent with respect to enacting statutes like the Hawaii Telemedicine law is recognized by the Hawaii Medical Board. As you may know, HMSA launched its Online Care program earlier this year. In our efforts to develop this program, we reviewed the statutes and appreciated the Legislature's long-standing support of telemedicine in Hawaii.

The Board, it appears from public statements, was not fully advised by the Attorney General of its statutory obligations prior to issuing its guidelines on online care interactions. In fact, it is our understanding, that members of the Board were totally unaware of Hawaii's Telehealth statute.

It is our understanding that SB 1220 addresses what has now become recognized among all stakeholders in recent discussions relative to the Hawaii Medical Board's actions regarding telemedicine, that in addition to issuing guidelines inconsistent with state law regarding telemedicine, these guidelines were also not in compliance with the rule making process as defined in chapter 91.

It is our belief that introduction of this legislation, along with the knowledge of the Legislature's support of telehealth, has led to the Board's open recognition of these inconsistencies. It is our hope that with the nature of the legislature's intent being made very clear-- as expressed in this bill -- the Board will now pursue rules consistent with state law. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD'.

Jennifer Diesman
Assistant Vice President
Government Relations