

**SB 1610**

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 9, 2009

The Honorable David Ige, Chair  
The Honorable Josh Green M.D., Vice Chair

Senate Committee on Health

**Re: SB 1610 – Relating to Medical Orders**

Dear Chair Ige, Vice Chair Green and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 1610.

There seem to be some areas in statute that are either conflicting or unclear as to whether a Registered Nurse (RN) can consider a medical order issued by a Physician Assistant (PA) to have been issued by the supervising physician affiliated with the PA. This measure would clarify that in certain circumstances an RN can consider these orders to have been issued by the supervisory physician. SB 1610 will ensure that the statutes regarding this situation are integrated and will eliminate any conflicting language which may be causing confusion today.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Diesman".

Jennifer Diesman  
Assistant Vice President  
Government Relations

Testimony of  
Frank P. Richardson  
Vice President and Regional Counsel

Before:  
Senate Committee on Health  
The Honorable David Y. Ige, Chair  
The Honorable Josh Green, M.D., Vice Chair

February 9, 2009  
2:45 pm  
Conference Room 016

### **SB 1610 RELATING TO MEDICAL ORDERS**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on SB1610 which would amend the Medical Practice Act and Nurse Practice Act to deem medical orders issued by physician assistants to be issued by their supervising physician; and that when a registered nurse follows such a medical order issued by a physician assistant, the registered nurse is actually following an order of the supervising physician.

#### **Kaiser Permanente Hawaii opposes this bill.**

This bill is not necessary because the law is already clear that Physician Assistants (PAs) may issue medical orders that a registered nurse may take and fulfill. Additionally, if enacted, this bill may cause confusion in how medical services by PAs are billed and reimbursed.

First, it is clear from the Medical Practice Act, HRS §453-5.3, that PAs are licensed to practice medicine. It is also clear that, in acting as the agent of their supervising physician, “medical services rendered by the physician assistants may include, but are not limited to....ordering, interpreting, or performing diagnostic and therapeutic procedures.” Hawaii Admin. Rules (HAR) §16-85-49.1(b)(2).

The Board of Nursing, in its Minutes of Meeting, dated November 7, 2003, at pages 5-6, addressed the issue of “Nurses Taking Orders from Physician Assistants (§457-2, HRS) (§16-85-49.1(b)(2), HAR).” The meeting minutes reflect the Board of Nursing’s conclusion: “The Board agrees that the law allows a PA, as an agent of the supervising physician, to order procedures which presumably a registered nurse should be able to take and fulfill.” The minutes go on to note that a registered nurse is not supervised by a PA, but that is not and should not be an issue.

Furthermore, PA services are generally billed and reimbursed at 85% of the physician fee schedule. If, as set forth in this bill, PA orders “shall not be deemed a medical order of the physician assistant but shall be deemed a medical order of the physician assistant’s supervising physician,” would the order be billed and reimbursed as a PA order or as a physician order at the full physician fee schedule rate?

Additionally, under this bill it would be necessary for the supervising physician to “affirmatively authorize the physician assistant to issue a medical order.” See Section 2, amended language to Ch. 453 of the Hawaii Revised Statutes. Would this be a specific order in a specific circumstance? Or would this be a standing authorization for PAs to issue orders, in general? Certain orders? Any orders? Would the PA simply be “transmitting” physician orders?

If the purpose and intent of this bill is to clarify that RNs may take and act upon medical orders from PAs, the simplest and most elegant solution would be to amend the definition of “The practice of nursing as a registered nurse” at HRS §457-2 of the Nurse Practice Act to simply add PAs to the list of practitioners whose medical orders an RN can carry out. The definition already lists dentists, medical doctors, osteopaths, and podiatrists; and it would take but a comma and two words to add PAs to the list. The same could be done for the definition of “The practice of nursing as a licensed practical nurse.” (See attached.)

Thank you for your consideration.

**§457-2 Definitions.** As used in this chapter unless the content otherwise requires:

"Advanced practice registered nurse" means a registered nurse who has met the qualifications for advanced practice registered nurse set forth in this chapter and through rules of the board, which shall include educational requirements.

"Board" means the state board of nursing.

"Nurse" means a person licensed under this chapter or a person who holds a license under the laws of another state or territory of the United States that is equivalent to a license under this chapter.

"Telehealth" means the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration, to the extent that it relates to nursing.

"The practice of nursing as a licensed practical nurse" means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, implementation of basic nursing procedures in the plan of care; or observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, medical doctor, registered nurse, osteopath, ~~or~~ podiatrist, or physician assistant licensed in accordance with chapter 448, 453, 457, 460, or 463E; or administration of treatment and medication as prescribed; or promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

"The practice of nursing as a registered nurse" means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; or administration, supervision, coordination, delegation, and evaluation of nursing practice; or provisions of health care to the patient in collaboration with other members of

the health care team as autonomous health care professionals providing the nursing component of health care; or utilization of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, medical doctor, osteopath, ~~or~~ podiatrist, or physician assistant licensed in accordance with chapter 448, 453, 460, or 463E or the orders of an advanced practice registered nurse recognized in accordance with this chapter. [L 1970, c 71, pt of §1; am L 1985, c 238, §1; am L 1994, c 277, §§3, 4; am L 1996, c 150, §1; am L 2000, c 9, §1]

**Note**

Chapter 460 referred to in text is repealed.

Senator David Y. Ige, Chair  
Senator Josh Green, Vice-chair  
**Health Committee**  
Senator Rosalyn H. Baker  
Senator David Y. Ige  
**Commerce and Consumer Protection Committee**  
Hawaii Academy of Physician Assistants  
Tuesday, February 09, 2009  
Support of SB 1610: Relating to Physician Assistants

The Hawaii Academy of Physician Assistants is in support of SB 1610 however would recommend the following changes:

A) We find the following language ambiguous and recommend that it be removed or changed to eliminate the word "affirmatively", which may be open to varied interpretation.

(2) The supervising physician:

(A) ~~Affirmatively authorizes the physician assistant to issue a medical order,~~

We recommend striking this from the bill as will be shown at the end of this document by strike through and underline changes.

B) Chart review and supervision are addressed in the Hawaii Administrative Rules §16-85-49. HAPA feels that it is prudent to leave the issue of chart review in the Hawaii Administrative Rules and not place it in the Revised Statutes. This would allow for rules changes by a rules by Board of Medical Examiners rather than by Legislative change. We recommend the following change in language:

Strike the following:

(D) ~~Within seven working days of the issuance of the order, personally reviews the records of the patient for whom a physician assistant has issued a medical order and who has been seen by the physician assistant.~~

Change to:

Record review shall be in compliance with HAR §16-85-49 as promulgated by the Hawaii Board of Medical Examiners

Formatted: Font: (Default) Courier New, 12 pt

Formatted: Font: (Default) Courier New

Formatted: Font: (Default) Courier New, 12 pt

The Hawaii Academy of Physician Assistants is in full support of the content of this bill as it will serve to resolve the issue of nurses taking orders from physician assistants in a definitive manner. In all situations, the physician assistant is the agent of the physician. We urge you to pass SB 1610 with the recommended changes. The following pages show the appropriate strikethrough and underline changes.

Fielding Mercer  
President - Hawaii Academy of Physician Assistants

Formatted: Font: (Default) Times New Roman

**Report Title:**

Physician Assistant; Registered Nurse; Medical Orders

**Description:**

Clarifies that, under certain conditions, a physician assistant acts as agent of the supervising physician when issuing a medical order and the order is deemed to be issued by the supervising physician. Clarifies that, under certain conditions, when following a medical order issued by a physician assistant, a registered nurse follows a medical order issued by the supervising physician for whom the physician assistant acts as agent. Does not relieve physician assistants or registered nurses from exercising due care in performing within their respective scope of practice.

---

## A BILL FOR AN ACT

RELATING TO MEDICAL ORDERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that both physician assistants and registered nurses provide valuable medical care to patients under the orders of licensed physicians.

Physician assistants are licensed under section 453-5.3, Hawaii Revised Statutes, and practice under the supervision of a physician or osteopathic physician. The Hawaii medical board implemented administrative rules to delineate the scope of practice of a physician assistant and the complementary responsibilities of the physician assistant and the supervising physician.

Specifically, under section 16-85-44.5, Hawaii Administrative Rules, "a physician assistant may perform those duties and responsibilities delegated by the physician assistant's supervising physician." In turn, a supervising physician is defined to mean "a physician or

group of physicians or an osteopathic physician and surgeon licensed to practice medicine and surgery in this State who accepts the responsibility for the supervision of services rendered by physician assistants. The supervising physician shall direct and exercise supervision at all times." Supervision means "overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place the services are rendered." In providing this supervision, the supervising physician is required under section 16-85-49(a)(4), Hawaii Administrative Rules, to provide "adequate means for direct communication between the physician assistant and the supervising physician; provided that where the physical presence of the supervising physician is not required, the direct communication may occur through the use of technology which may include but is not limited to, two way radio, telephone, fax machine, modem, or other telecommunication device." In addition, a supervising physician is required to "personally review the records of each patient seen by the physician assistant within seven working days."

Furthermore, under section 16-85-46(a)(10), Hawaii Administrative Rules, a physician assistant is required to provide a "statement signed by the licensed physician or group of physicians, as the case may be, stating that the physician or group of physicians will direct and supervise the physician assistant and that the physician assistant will be considered the agent of the physician or group of physicians."

The legislature also finds that registered nurses are licensed under chapter 457, Hawaii Revised Statutes, and are regulated by the board of nursing. Among other actions, in performing the practice of nursing as a registered nurse, a registered nurse uses reasonable judgment in carrying out prescribed medical orders of a licensed dentist, medical doctor, osteopath, or podiatrist, or the orders of an advanced practice registered nurse.

Because the historical process of licensing and regulating the scopes of practice of physician assistants and of registered nurses has developed independently for the two health care disciplines, the relevant regulatory language pertaining to their respective responsibilities with respect to following physician orders is neither compatible nor clear. This situation has led to conflict

between the two groups when registered nurses decline to accept orders from physician assistants.

The legislature finds that clarifying the relevant statutory language is necessary to resolve the situation to clearly state that, under certain conditions, orders from a physician assistant do not originate from the physician assistant but from the supervising physician for whom the physician assistant acts as an agent.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§453- Order given by physician assistant; agent.

(a) Any medical order issued by a licensed physician assistant, who is properly performing within the physician assistant's scope of practice under this chapter, shall not be deemed a medical order of the physician assistant but shall be deemed a medical order of the physician assistant's supervising physician; provided that:

(1) The physician assistant is acting under the required supervision of a supervising physician;  
and

(2) The supervising physician:

~~(A) Affirmatively authorizes the physician assistant to issue a medical order;~~

(BA) Accepts full responsibility for the issuing of the medical order by the physician assistant;

(GB) Provides adequate means for direct communication between the physician assistant and the supervising physician; provided that where the physical presence of the supervising physician is not required, the direct communication may occur through the use of technology that may include but is not limited to two-way radio, telephone, fax machine, modem, or other telecommunication device; and

~~(DC) Within seven working days of the issuance of the order, personally reviews the records of the patient for whom a physician assistant has issued a medical order and who has been seen by the physician assistant.~~

Record review shall be in compliance with

HAR §16-85-49, as promulgated by the Hawaii

Board of Medical Examiners

Formatted: Font: (Default) Courier New, 12 pt

Formatted: Font: (Default) Courier New

Formatted: Font: (Default) Courier New, 12 pt

(b) In issuing any medical order under subsection (a), a physician assistant shall be deemed an agent of the supervising physician.

(c) Nothing in this section shall be construed to relieve any physician assistant from an obligation to exercise due care in the performance of the physician assistant's scope of practice."

SECTION 3. Chapter 457, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§457- Order given by physician assistant; agent.

(a) Any medical order issued by a physician assistant properly licensed under section 453-5.3 and who is properly performing within the physician assistant's scope of practice shall not be deemed a medical order of the physician assistant but shall be deemed a medical order of the physician assistant's supervising physician; provided that:

(1) The physician assistant is acting under the required supervision of a supervising physician; and

(2) The supervising physician:

(A) ~~Affirmatively authorizes the physician assistant to issue a medical order;~~

(BA) Accepts full responsibility for the issuing of the medical order by the physician assistant;

(GB) Provides adequate means for direct communication between the physician assistant and the supervising physician; provided that where the physical presence of the supervising physician is not required, the direct communication may occur through the use of technology that which may include but is not limited to two-way radio, telephone, fax machine, modem, or other telecommunication device; and

~~(BC) Within seven working days of the issuance of the order, personally reviews the records of the patient for whom a physician assistant has issued a medical order and who has been seen by the physician assistant.~~

Record review shall be in compliance with

HAR §16-85-49 as promulgated by the Hawaii

Board of Medical Examiners

(b) In following any medical order issued by a physician assistant under subsection (a) and section 453- , a registered nurse shall be deemed to be following

Formatted: Font: (Default) Courier New, 12 pt

Formatted: Font: (Default) Courier New

Formatted: Font: (Default) Courier New, 12 pt

a medical order issued by the supervising physician of the physician assistant, who shall be deemed as acting as an agent of the supervising physician.

(c) Nothing in this section shall be construed to relieve any registered nurse from an obligation to exercise due care in the performance of the registered nurse's scope of practice."

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

**PRESENTATION OF THE  
HAWAII MEDICAL BOARD**

TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 9, 2009  
2:45 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON SENATE BILL NO. 1610, RELATING TO MEDICAL ORDERS.**

TO THE HONORABLE DAVID Y. IGE, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide written testimony on S.B. No. 1610, Relating to Medical Orders. The Hawaii Medical Board ("Board") has not had the opportunity to review this bill but will be discussing it at the next Board meeting on February 13, 2009. Therefore, although the Board is not able to take a position at this time it will be able to offer comments at subsequent hearings.

Thank you for the opportunity to provide written comments on this bill.

**PRESENTATION OF THE  
BOARD OF NURSING**

THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 9, 2009  
2:45 p.m.

WRITTEN TESTIMONY ONLY

**TESTIMONY ON SENATE BILL NO. 1610, RELATING TO MEDICAL ORDERS.**

TO THE HONORABLE DAVID Y. IGE, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Kathy Yokouchi. I am the Executive Officer for the Board of Nursing ("Board"). I appreciate the opportunity to present written testimony on behalf of the Board in support of Senate Bill No. 1610.

The purpose of this measure is to clarify that, under certain conditions, a physician assistant ("PA") may act as an agent of the supervising physician when issuing a medical order and the order is deemed to be issued by the supervising physician. It also clarifies that, under certain conditions, when following a medical order issued by a PA, a registered nurse ("RN") follows a medical order issued by the supervising physician for whom the PA acts as an agent. It does not relieve the PA or RN from exercising due care in performing within their respective scope of practice.

This measure provides assurance that medical orders issued to RNs by PAs, are by specific direction from and knowledge of his or her supervising physician. This ensures patient safety.

We respectfully request that this measure be passed out of Committee.

Thank you for the opportunity to submit testimony on Senate Bill No. 1610.

Written Testimony for SB 1610

HTH/CPN

Senator David Y. Ige Fax 586-6231

Senator Josh Green

Commerce and Consumer Protection Committee

Senator Rosalyn H. Baker Fax: 586-6071

Senator David Y. Ige

Hawaii Academy of Physician Assistants

Senator David Y. Ige, Chair  
Senator Josh Green, Vice-chair  
**Health Committee**  
Senator Rosalyn H. Baker  
Senator David Y. Ige  
**Commerce and Consumer Protection Committee**  
Hawaii Academy of Physician Assistants  
Tuesday, February 09, 2009  
Support of SB 1610: Relating to Physician Assistants

The Hawaii Academy of Physician Assistants is in support of SB 1610 however would recommend the following changes:

A) We find the following language ambiguous and recommend that it be removed or changed to eliminate the word "affirmatively", which may be open to varied interpretation.

(2) The supervising physician:

(A) ~~Affirmatively authorizes the physician assistant to issue a medical order;~~

We recommend striking this from the bill as will be shown at the end of this document by strike through and underline changes.

B) Chart review and supervision are addressed in the Hawaii Administrative Rules §16-85-49. HAPA feels that it is prudent to leave the issue of chart review in the Hawaii Administrative Rules and not place it in the Revised Statutes. This would allow for rules changes by a rules by Board of Medical Examiners rather than by Legislative change. We recommend the following change in language:

Strike the following:

(D) ~~Within seven working days of the issuance of the order, personally reviews the records of the patient for whom a physician assistant has issued a medical order and who has been seen by the physician assistant.~~

Change to:

Record review shall be in compliance with HAR §16-85-49 as promulgated by the Hawaii Board of Medical Examiners

The Hawaii Academy of Physician Assistants is in full support of the content of this bill as it will serve to resolve the issue of nurses taking orders from physician assistants in a definitive manner. In all situations, the physician assistant is the agent of the physician. We urge you to pass SB 1610 with the recommended changes. The following pages show the appropriate strikethrough and underline changes.

Fielding Mercer

| President - Hawaii Academy of Physician Assistants

---

**From:** on behalf of HTHTestimony  
**Subject:** FW: Testimony for SB1610 on 2/9/2009 2:45:00 PM  
**Attachments:** SB 1610.txt

-----Original Message-----

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Sunday, February 08, 2009 5:01 PM  
To: HTHTestimony  
Cc: siyokanoi@yahoo.com  
Subject: Testimony for SB1610 on 2/9/2009 2:45:00 PM

Testimony for HTH 2/9/2009 2:45:00 PM SB1610

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Kanoi Roberson, P.A.-C.  
Organization: Individual  
Address: 34 Baxendale Cataumet, MA  
Phone: 508 284-3676  
E-mail: [siyokanoi@yahoo.com](mailto:siyokanoi@yahoo.com)  
Submitted on: 2/8/2009

Comments:IN SUPPORT

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2009 9:13 AM  
**To:** HTHTestimony  
**Cc:** ratpatrol2002@hotmail.com  
**Subject:** Testimony for SB1610 on 2/9/2009 2:45:00 PM  
**Attachments:** testimony.2.1610[1].doc

Testimony for HTH 2/9/2009 2:45:00 PM SB1610

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Shirley Haynes  
Organization: Individual  
Address: 91-1001 Hokuimo Kapolei, HI  
Phone: 808 398-2209  
E-mail: [ratpatrol2002@hotmail.com](mailto:ratpatrol2002@hotmail.com)  
Submitted on: 2/9/2009

Comments:

Senator David Y. Ige, Chair

Senator Josh Green, Vice-chair

**Health Committee**

Senator Rosalyn H. Baker

Senator David Y. Ige

**Commerce and Consumer Protection Committee**

Tuesday, February 9, 2009 2:45 PM

Support of SB 1610: Physician Assistant; Registered Nurse; Medical Orders

I, Shirley Haynes PA-C support SB 1610.

The concern as to whether nurses should execute orders from Physician Assistants has been raised in this state and others over the years since establishing the physician assistant model and licensure and utilization of physician assistants. Attorney general opinion in states such as Delaware, Florida and Washington and others have been that nurses should honor a reasonable treatment or medication order issued by a duly licensed physician assistant acting under the supervision of a physician. The nurse who honors such an order does so because it is, in effect, the order of the physician, and does not thereby violate the Nurse Practice Act.<sup>1 2 3</sup> Many states have enacted legislation to specifically address this issue.

Passage of this bill will improve care provided to patients in hospitals by physicians, physician assistants and nurses. It will establish a statute which will clearly define the role of PAs and nurses regarding hospital orders written by physician assistants.

Health care shortages in rural areas of Hawaii are being improved through the utilization of physician assistants both in clinics and hospitals. It is important the physician assistants working under the supervision of physicians be able to write medical orders to be executed by nursing personnel. Any ambiguity in the law could jeopardize safe patient care in the hospital setting.

We ask your support in passing SB 1610.  
Thank you for this opportunity to testify.

---

<sup>1</sup> AGLO 1978 No. 12 - March 23, 1978

<sup>2</sup> Number: AGO 77-96 September 13, 1977

<sup>3</sup> Civil Division - Kent County (739-7641) Feb 28, 2002 02-IB06

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2009 11:05 PM  
**To:** HTHTestimony  
**Cc:** warp11@hawaii.rr.com  
**Subject:** Testimony for SB1610 on 2/9/2009 2:45:00 PM

Testimony for HTH 2/9/2009 2:45:00 PM SB1610

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: John Y. Lee  
Organization: Individual  
Address: 1661 Laukahi St. Honolulu, HI  
Phone: (808) 432-8341  
E-mail: [warp11@hawaii.rr.com](mailto:warp11@hawaii.rr.com)  
Submitted on: 2/8/2009

Comments: