



Alliance for Patient Safety

*All that is necessary for the triumph of evil...
... is for good men to do nothing.*

Edmund Burke

RED ALERT !!! FAXED on 7/13/2011 9:06AM PDT to (916) 319-2118

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- URGENT AMENDMENT REQUIRED in AB 655 (Hayashi), as it Compromises our patients' safety.

Re: Transfer of Medical Peer Review Records from one Hospital to Another

**ATTENTION: California Assemblymember Mary HAYASHI, 18th Assembly District,
Chair, [Assembly Committee on Business, Professions and Consumer Protections](#)**

Dear Assemblymember Hayashi,

I respectfully request that you incorporate this letter into the legislative history of AB 655, thank you very much.

The way AB655 is presently written, there is absolutely nothing that precludes a hospital from circulating unfounded, bogus, defamatory,

vicious and malicious allegations WITHOUT the physician's knowledge, let alone any consent !!!

As it stands, AB 655 promotes and legitimizes the " Code of Silence ", which is a most significant impediment to our patients' safety, as it prevents physicians from acting in the best interests of their patients and exacerbates healthcare costs.

This letter is a follow up to the letters of Dr Weinmann, Dr Hinsdale, Dr Zwelling, Dr Rao, Dr Moza, Ms Kramer and myself, dated June 12, 2011, see:

- Letters to Elected Officials and Testimony to Government Agencies, <http://allianceforpatientsafety.org/letters.php>

- Letters to Assemblymember Mary Hayashi & Senator Gloria Negrete McLeod

- URGENT AMENDMENT REQUIRED in AB 655 Re: Transfer of Peer Review Records from one Hospital to Another sent 6/12/2011

[Read Letter from Robert Weinmann, M.D.](#), Past President, UAPD

[Read Letter from Gil Mileikowsky, M.D.](#), Founder
AFPS, <http://allianceforpatientsafety.org/hayashi-06-12-2011.php>

To remedy this unfair and unreasonable proposition, following, please find, the amendment proposed by Jeffrey White, senior amicus counsel for the American Association for Justice, AAJ, and the Center for Constitutional Litigation, P.C., in Washington DC.

Mr Jeffrey White is the author of the powerful amicus brief filed on behalf of 14 organizations before the CA Supreme Court, on 8/28/2008, in:

Mileikowsky v. HCA, West Hills Hospital Medical Center (Mileikowsky-III), <http://www.allianceforpatientsafety.org/westhills/>, see:

Amicus Briefs Filed in Support of Petitioner/Apellant Gil N Mileikowsky, M.D., [Read Briefs](#), <http://www.allianceforpatientsafety.org/westhills/wh-amicus-gm.php>

From: Jeffrey.White@cclfirm.com
Subject: Are you Ready to Join me for some Significant Action before the CA Legislature and the Governor ?
Date: July 11, 2011 7:28:06 AM PDT
To: gil@allianceforpatientsafety.org

Hi Dr. Gil, and thank you for your kind words.

I'm not sure how I might join you. I have not studied this matter in depth, except to read AB 655 as amended July 6.

I think Dr. Frey, as usual, hits the nail on the head. And I think the scenario Dr. Weinmann describes is also on the mark.

The hospital strategy often is to ignore the doctor's paper rights and simply try to wear him or her down.

Poisoning the paper trail that follows the doctor is one way to do this.

If you are considering a possible fix, a simple amendment to (e) might do the trick:

“The responding peer review body ~~is not obligated to~~ may not produce the relevant peer review . . . “

In any event, I wish you the best success,

Jeffrey R. White
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From: hsfrey@verizon.net
Subject: AB 655
Date: July 10, 2011 9:30:55 PM PDT
To: gil@allianceforpatientsafety.org

Hi Gil:

I know nothing about this, so I tried to look it up. The bill on the leginfo website says that:

"All relevant peer review information produced pursuant to this section shall be made available to the licentiate by the requesting peer review body in accordance with Section 809.2. ", but that section isn't included.

If the information can be provided to the requesting hospital but not to the licentiate, that would appear to me to violate the spirit of the Confrontation clause of the 6th Amendment.

That clause, of course, refers only to Criminal cases brought by a government, but the government becomes involved here if, say, a license is revoked, and the licentiate is unable to contest the revocation because he is denied access to the allegations.

That would appear to be a "taking", and thus subject to Constitutional protections.

I would also point out that the language:

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.

does not prohibit the responding peer review body from VOLUNTARILY providing the requested information without the licentiate's release, as for instance out of personal animus.

Best of luck to you.

Harvey

Harvey S. Frey MD PhD JD

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Dear Assemblymember Hayashi,

I trust that you do not want your good name to be associated with a bill that blatantly violates the fundamental principles of

US Jurisprudence, i.e. that a law must be (1) Fair and (2) Reasonable.

The above section (e) of AB 655 belongs to the Spanish Inquisition.

Thank you very much for your leadership and dedication,

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>