



# Alliance for Patient Safety

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

Edmund Burke

## **Opposition to H.B. 655 (Hayashi), as it compromises our Patients' Safety**

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

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Sent July 15, 2011 by E-mail and Fax to: [916-319.33.06](tel:916-319.33.06)

**Attention: Angela Mapp**, Consultant, CA's Assembly Committee on Business, Professions and Consumer Protections

Dear Ms Mapp,

The following will memorize our conversation this afternoon.

You advised me that you had not received my e-mail, dated July 13, 2011 7:24:19 AM PDT, so I just resent it to you and you confirmed receipt of it during our conversation, see enclosed.

We discussed the latest version of AB 655 and its significant dangers. I explained to you why the amendment CMA added on July 6, 2011, was utterly insufficient, as it does not mandate anything, let alone require that the licentiate be consulted and requested to verify the accuracy of the information provided to another facility. In fact, another licentiate's records could be transferred by mistake without any knowledge of the licentiate in question.

You directed my attention to the last sentence in section (b) in the sincere belief that it would assure the integrity of the process:

*" 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."*

I offered to explain to you how these procedures are actually handled by hospitals, based on my personal extensive experience in this subject, and why this section (b) offers no protection whatsoever, let alone any guarantee.

When I asked you if you watched my testimony before the Senate B & P Committee, that I provided you on June 10, 2011, you were candid enough to admit that unfortunately you did not

have the time to familiarize yourself with the proceedings before the Senate B & P Committee, so I sent it to you once again today, as we spoke, and you confirmed receiving it.

I was surprised when you asked me if there was any opposition to this bill, when you have confirmed receiving my letter dated June 12, 2011, and we spoke about our opposition as well as our suggestion to convert it into a two year bill, due to the considerable amount of work it requires.

As you stated that you had to leave, I offered you to have a scheduled conference call anytime that is convenient to you.

On June 12, 2011, your office received two letters of opposition to AB 655.

For your convenience, all of these letters of opposition were posted on our website under:

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

- Letter to Assemblymember Mary Hayashi - **RED ALERT !!!**
- URGENT AMENDMENT REQUIRED in AB 655 (Hayashi), as it Compromises our patients' safety. Sent 7/13/2011 [Read Letter](#)
- Letters to Assemblymember Mary Hayashi & Sen. 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>

The letter of opposition to AB 655 clearly stated that:

" Following, please find, for your consideration the comments, thoughts and suggested amendments provided by prominent members of our community regarding this bill.

The following correspondence, twenty seven (27) e-mails, is between myself and:

- 1) Dr. Hinsdale, President, California Medical Association, CMA,
- 2) Dr. Weinmann, Past President, Union of American Physicians and Dentists, UAPD, affiliated with the AFL/CIO,
- 3) Dr. Zwelling, Past President, Los Angeles County Medical Association, LACMA,
- 4) Dr. Garfinkle, prominent General Surgeon, in Hayward, CA, 18th District,

5) Dr. Rao, victim of retaliation by Washington Hospital, in Alameda County, because of his participation in a documentary entitled,

" Life for Sale ", <http://evelynlimd.blogspot.com/>, see:

Is Peer Review on a Collision Course with Finance? by Robert Weinmann, M.D.

Summary of Retaliation against Dr. Rao from *The Weinmann Report*.

<http://politicsofhealthcare.blogspot.com/2011/01/is-peer-review-on-collision-course-with.html>

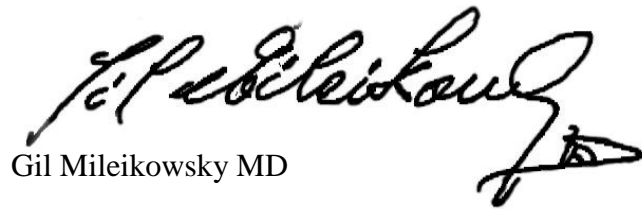
6) Sharon Kramer, prominent CA Healthcare Activist, particularly regarding the adverse effects of toxic elements in building, such as Mold,...

see: <http://katysexposure.wordpress.com/2010/04/30/truth-out-sharon-kramer-letter-to-andrew-saxon-mold-issue/>

7) Dr. Moza, victim of retaliation by hospitals in CA, <http://allianceforpatientsafety.org/moza.php> "

As you did not have the opportunity to familiarize yourself of all the information I sent you on June 10, 2011, I sent you today another e-mail with a more limited amount of documents, previously sent to you, in order not to overburden you.

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>

ENCLOSURES:

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**Subject: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) as it Compromises our Patients' Safety.**

**From:** [gil@allianceforpatientsafety.org](mailto:gil@allianceforpatientsafety.org)  
**Date:** July 14, 2011 2:39:48 PM PDT  
**To:** [angela.mapp@asm.ca.gov](mailto:angela.mapp@asm.ca.gov)

I provided my latest analysis of US Healthcare to Governor Arnold Schwarzenegger, on september 26, 2010, when I asked the Governor to veto a law that I initiated, because the attorneys of the California Hospital Association utterly twisted it upside down.

In this letter, I **compare the US Healthcare system to the Holocaust. The Governor vetoed that Bill in the following 48 hours**, see:

Letter to Governor Arnold Schwarzenegger from Gil Mileikowsky, M.D.,  
dated 9/26/2010,  
- VETO AB 1235 - Corporate Control of Medical Peer Review

[Read Letter in HTML Format, http://www.allianceforpatientsafety.org/schwarzenegger-09-26-2010.php](http://www.allianceforpatientsafety.org/schwarzenegger-09-26-2010.php)  
[Read Letter in PDF Format](#)

and

**Subject: "Is Physician Peer Review a Broken System?"**  
**From:** [gil@allianceforpatientsafety.org](mailto:gil@allianceforpatientsafety.org)  
**Date:** July 14, 2011 2:41:08 PM PDT  
**To:** [angela.mapp@asm.ca.gov](mailto:angela.mapp@asm.ca.gov)

**"Is Physician Peer Review a Broken System?"**  
Hearing of California Senate Business, Professions and Economic Development Committee,  
Sacramento, CA, 3/9/2009  
[Read or Watch Testimony, http://allianceforpatientsafety.org/ca-senate.php](http://allianceforpatientsafety.org/ca-senate.php)

**Subject: URGENT AMENDMENT REQUIRED in AB 655 (Hayashi) as it Compromises our Patients' Safety.**  
**From:** [gil@allianceforpatientsafety.org](mailto:gil@allianceforpatientsafety.org)  
**Date:** July 14, 2011 2:25:26 PM PDT  
**To:** [angela.mapp@asm.ca.gov](mailto:angela.mapp@asm.ca.gov)

FYI

----- Forwarded message -----  
From: "MetroFax" <[faxbounce@fax.metrohispeed.com](mailto:faxbounce@fax.metrohispeed.com)>

Date: Jul 13, 2011 9:08 AM  
Subject: Your fax has been successfully sent to Mary Hayashi at [916-319-2118](tel:916-319-2118).  
To: <[jbailey@corpspecla.com](mailto:jbailey@corpspecla.com)>

To Name:	<a href="#">Mary Hayashi</a>
To Number:	<a href="tel:916-319-2118">916-319-2118</a>
Subject:	

**Attempt 1:**

Date/Time:	7-13-2011 9:06:52 AM (GMT -08:00)
Pages:	4
Transmission Time:	01:08
Reason:	Successful Send

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Thank you for using MetroFax®. If you have any questions,  
please contact [support@metrofax.com](mailto:support@metrofax.com).

**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.**

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**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/Appellant Gil N Mileikowsky, M.D., [Read Briefs](#), <http://www.allianceforpatientsafety.org/westhills/wh-amicus-gm.php>

**From:** [Jeffrey.White@cclfirm.com](mailto: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](mailto: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  
Senior Counsel  
Center for Constitutional Litigation, P.C.  
777 6th Street NW, Suite 520  
Washington, DC 20001-3723  
Tel: [\(202\) 944-2839](tel:(202)944-2839)  
Fax: [\(202\) 965-0920](tel:(202)965-0920)  
E-mail: [jeffrey.white@cclfirm.com](mailto:jeffrey.white@cclfirm.com)

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**From:** [hsfrey@verizon.net](mailto:hsfrey@verizon.net)  
**Subject:** AB 655  
**Date:** July 10, 2011 9:30:55 PM PDT  
**To:** [gil@allianceforpatientsafety.org](mailto: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

[hsfrey@harp.org](mailto:hsfrey@harp.org) [www.harp.org](http://www.harp.org)

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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,

A handwritten signature in black ink, appearing to read 'Gil Mileikowsky MD'. The signature is fluid and cursive, with a large, stylized 'G' and 'M'.

Gil Mileikowsky MD

- President and Founder,

- Alliance For Patient Safety, AFPS, <http://allianceforpatientsafety.org/>

- <http://allianceforpatientsafety.org/socalphysgm.pdf>

- <http://allianceforpatientsafety.org/blackbox.pdf>