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April 5, 2010

The Honorable Gloria Negrete-McLeod, Chair
Senate Business and Professions Committee
State Capitol
Sacramento, CA. 95814

Re: SB1111 (Negrete-McLeod): Oppose Unless Amended

Dear Senator Negrete-McLeod:

The Service Employees International Union opposes SB1111 (Negrete-McLeod) as currently amended because it creates problems for licensed health professionals without improving patient safety.

As the largest health care union in California, SEIU has a keen interest in assuring safe patient care. We represent tens of thousands of health professionals regulated by the Department of Consumers Affairs, including doctors, registered nurses, licensed vocational nurses, respiratory therapists, and virtually every other category of licensed or certified health professional.

Our members provide care in hospitals, nursing homes, clinics, doctor's offices, jails and every other health care setting. Most of them do their level best to provide good care, often under trying circumstances of short-staffing and indifferent management.

While we have many concerns with this measure as noted below, we support those provisions which provide investigators responsible to individual licensing boards as well as expedited action once unsafe practice is proven rather than merely alleged.

First, it is essential that investigators understand the specifics of the professional practice and law governing those whom they investigate. Physicians are not experts in nursing practice or the law governing that practice. Nursing practice is independent of physicians. Similarly, other licensed health professionals have their own licensing acts and their own professions. Investigators attempting to determine whether care is safe should be expert in the profession which they are investigating.

Second, reporting of unsubstantiated allegations by employers should not be countenanced. Any allegation should meet standards of substantiation; otherwise, every health professional in California will be guilty until proven innocent. Without requiring due process or substantiation of allegations by an employer, health professionals would be denied basic protections afforded other Americans. Unless an employee has a collective

bargaining agent, an employer may terminate that employee at will and allege that the termination was "for cause" as provided in Sec. 720.24: this measure makes no provision for peer review, due process or representation of the employee in such termination.

Third, sadly, too many employers in California continue to engage in activities designed to prevent workers from being represented by a union of their choice. Reporting unsubstantiated allegations facilitates anti-union activity by employers. We wish this were an idle threat. As a union, we have represented longtime health care workers who were reported by an employer to DPH for having Spanish surnames the day after their names appeared on an organizing flyer. As a union, our members and prospective members routinely experience the intimidation of so-called "one on one's", in which several managers intimidate or threaten an individual worker.

Fourth, we are opposed to disclosure of licensee address on the Internet. Many health professionals, including registered nurses, licensed vocational nurses, respiratory therapists and others, work almost exclusively as employees and some work for multiple employers at the same time. Requiring disclosure of licensee addresses is effectively requiring disclosure of home addresses. This is an invasion of privacy that puts the safety of our members at risk. Surely the safety of patients can be protected without this over-reaching provision.

Fifth, we are opposed to requiring individual licensees to pay the costs of investigation. These costs are appropriately socialized through licensing fees that apply to the entire professions. Perhaps individual physicians can afford the costs of an investigation; nurses, respiratory therapists and other professionals cannot.

Sixth, appeals to the licensing board should not be at the discretion of the board. This deprives the licensee of due process, including the opportunity for appeal.

Seventh, all disciplinary actions by an Executive Officer should be subject to review by the board in question. This seems a minimum standard for accountability.

Eighth, we are deeply troubled by the violation of civil rights and the Americans with Disabilities Act contemplated by allowing discriminatory action against health professionals with conditions that are not a risk to patients. We recognize that health professionals must be able to provide care safely: we do not suggest that a blind person can perform neurosurgery. But neither are we willing to accept that someone who has

a condition that is controlled by medication or that does not otherwise interfere with their duties is incapable of providing care.

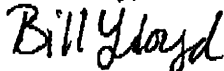
Ninth, the diversion program for the Board of Registered Nursing is a landmark program. Before it was created, no nurse could admit to substance abuse because to do so cost her the job and the profession on which she relied. We support a diversion program that is timely in tracking compliance with requirements. The privatization of this program to a contractor with a very mixed record has created significant problems. But that is no reason to return to the dark days before the creation of the diversion program when no nurse admitted to substance abuse because it cost her everything. Instead it is good reason to investigate whether privatization of diversion was the appropriate policy choice.

Finally, we are deeply troubled that the premise of this measure is that unsafe care occurs because of bad nurses, not managers who allow unsafe care and system failures that encourage it. Over 100,000 medical errors occur each year, yet no nurse manager has ever been sanctioned for them. "Never events" routinely occur in California hospitals, yet no nurse manager has ever been disciplined for the wrong limb being removed or health acquired infections. Unsafe staffing is rife in California's nursing homes, yet no nurse manager, no medical director is sanctioned for it. Many more patients are harmed by actions of management than by individual health professionals.

We support more timely and efficient investigation of complaints. Our members want to provide safe care. We do not want work alongside those who do not. But we also deserve the same rights to due process and privacy that are afforded to others under the California and United States Constitutions and the case law arising from those founding documents.

For these reasons, we are opposed to this measure as introduced.

Sincerely,



Bill A. Lloyd
Acting Executive Director

CC: Members and staff of the Senate Business and Professions
Committee

Senator Gloria Negrete-McLeod, author