

JAN 22 2008

S.B. NO. 2788

A BILL FOR AN ACT

RELATING TO MEDICAL MALPRACTICE COURTS.

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

1 SECTION 1. The legislature finds that the resolution of
2 disputes in cases involving medical malpractice issues should be
3 improved to assure litigants that the process is equitable and
4 just. A medical malpractice court would provide litigants with
5 increased access to the court system and efficient resolution of
6 medical malpractice disputes. In addition, medical malpractice
7 courts would create a specialized court with jurisdiction over a
8 specific subject matter. The legislature finds that
9 establishing medical malpractice courts would streamline the
10 litigation process and reduce the time and expense involved in
11 litigating medical malpractice matters.

12 The purpose of this Act is to establish a two-year medical
13 malpractice court pilot project within the State.

14 SECTION 2. (a) There is established a two-year medical
15 malpractice court pilot project to test this method of reducing
16 time and expense involved in the litigation of medical
17 malpractice claims. The Hawaii supreme court shall select one



1 judicial circuit within the State in which to establish the
2 jurisdiction of the medical malpractice court pilot project.

3 (b) To the full extent permitted by the constitution and
4 except as otherwise provided by law, the medical malpractice
5 court shall have jurisdiction over all civil actions against any
6 person that is licensed under chapter 453 or 460, Hawaii Revised
7 Statutes, that allege personal injury or death arising out of
8 services rendered within the jurisdiction of the medical
9 malpractice court by the person while the person was acting
10 within the scope of the license or certificate issued to them.

11 (c) In addition to civil actions specified in subsection
12 (b), the medical malpractice court shall have jurisdiction over:

13 (1) Any action in which the parties have agreed in writing
14 that any matter arising out of the agreement would be
15 resolved in the medical malpractice court;

16 (2) Any dispute concerning medical malpractice liability
17 insurance; and

18 (3) Any other medical malpractice dispute as provided by
19 order of the chief justice of the Hawaii supreme
20 court.

21 (d) The medical malpractice court, in all causes within
22 its jurisdiction, may grant legal and equitable relief so that



1 all matters in controversy between parties appearing before the
2 court may be completely determined.

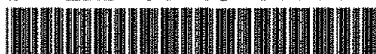
3 (e) The medical malpractice court shall be a court of
4 record. Judgments entered by the medical malpractice court may
5 be appealed to the courts of appeal in the same manner as
6 provided for appeals of judgments of the circuit courts.

7 (f) There shall be ___ judges in the medical malpractice
8 court who shall be assigned in the same manner as provided for
9 judges of the circuit courts and who shall receive the same
10 salary as judges of the circuit courts.

11 (g) Judges of the medical malpractice court may not engage
12 in the private practice of law or other gainful pursuit.

13 (h) Except as specifically provided in this part, all laws
14 of this State applicable to judges of the circuit courts are
15 applicable to judges of the medical malpractice courts.

16 (i) The chief justice of the Hawaii supreme court shall
17 assign one of the judges of the medical malpractice court to be
18 the presiding judge of the medical malpractice court. The
19 presiding judge, subject to the supervision of the chief
20 justice, shall be responsible for the administration of the
21 medical malpractice court.



1 (j) The medical malpractice court shall maintain a list of
2 qualified medical experts who may be utilized by the court to
3 provide independent expert opinions to the judges. These
4 experts may provide opinions in writing to the judge or may be
5 called by the judge to testify before the court to clarify or
6 interpret medical testimony or evidence, or for any other
7 purpose the judge deems relevant to the proceedings. The
8 plaintiff and defendant shall equally compensate the court
9 appointed medical expert based on the prevailing fee for medical
10 experts with similar qualifications.

11 (k) A medical expert appointed pursuant to subsection (j)
12 must meet the following minimum expert witness requirements:

- 13 (1) Hold an active license in the same state and in the
14 same profession as the defendant;
- 15 (2) Be trained and experienced in the same discipline or
16 school of practice as the defendant and be able to
17 demonstrate by competent evidence that, as a result of
18 training, education, knowledge, and experience in the
19 evaluation, diagnosis, and treatment of the disease or
20 injury which is the subject matter of the lawsuit
21 against the defendant, the individual was
22 substantially familiar with the applicable standards



1 of care and practice as they relate to the act or
2 omission which is the subject of the lawsuit on the
3 date of the incident;

4 (3) If the defendant is certified by a board recognized by
5 the American Board of Medical Specialties or the
6 American Osteopathic Association, the expert must be
7 certified in the same specialty by a board recognized
8 by the American Board of Medical Specialties or the
9 American Osteopathic Association and must have
10 acknowledged expertise and training directly related
11 to the particular health care or matter at issue; and

12 (4) Within five years of the date of the alleged
13 occurrence giving rise to the claim, was in active
14 medical practice in the same discipline or school of
15 practice as the defendant or devoted a substantial
16 portion of time teaching at an accredited medical
17 school, or in university-based research in relation to
18 the medical care and type of treatment at issue.

19 A court appointed medical expert shall have no financial
20 ties or familial relationship with any party to the lawsuit, any
21 expert called to testify, or any attorney representing any party
22 to the lawsuit. The court appointed medical expert shall have



1 no ex parte communications with any party to the lawsuit, except
2 as permitted by the court.

3 (1) The costs and fees applicable to the medical
4 malpractice courts shall be the same as those applicable to the
5 circuit courts as provided in section 607-5, Hawaii Revised
6 Statutes. No proceeding shall be heard by a medical malpractice
7 court unless the required costs and fees have been prepaid,
8 reduced, or remitted. The fees prescribed by the schedule in
9 section 607-5, Hawaii Revised Statutes, that are applicable to
10 the medical malpractice courts shall be paid to the clerk of the
11 medical malpractice court as costs of court by the person
12 instituting the action or proceeding, or offering the paper for
13 filing, or causing the document to be issued or the services to
14 be performed in the court.

15 SECTION 3. The presiding judge of the medical malpractice
16 courts shall submit an annual report to the chief justice of the
17 Hawaii supreme court and to the legislature not later than
18 twenty days prior to the convening of each of the regular
19 sessions of 2009 to 2014 on the activities of the medical
20 malpractice court pilot project. The report shall include:



1 (1) Information and statistics for the previous calendar
2 year concerning the operation of the medical
3 malpractice court;

4 (2) Recommendations by the presiding judge regarding the
5 clarification or revision of laws and rules relating
6 to medical malpractice and to practice and procedure
7 in the medical malpractice court; and

8 (3) Recommendations whether the program should be extended
9 or made permanent and funding.

10 SECTION 4. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$, or so
12 much thereof as may be necessary for fiscal year 2008-2009, and
13 the same sum, or so much thereof as may be necessary for fiscal
14 year 2009-2010, for purposes of the medical malpractice court
15 pilot project.

16 The sums appropriated shall be expended by the judiciary
17 for the purposes of this Act.

18 SECTION 5. This Act shall take effect on July 1, 2008.

19 INTRODUCED BY: Thomas Chun Oakland
Rosalyn H Baker

Report Title:

Medical Malpractice Courts

Description:

Establishes a medical malpractice court pilot project within the State and assigns jurisdiction over civil actions arising from medical malpractice.

