

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 813
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 813 entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL LIABILITY,"

begs leave to report as follows:

The purpose of this measure is to render expressions of sympathy or benevolence made to a patient or to a member of a patient's family inadmissible as evidence of an admission of liability in civil proceedings against a health care provider, or in related arbitration proceedings.

Your Committee received testimony in support of this measure from the Department of Commerce and Consumer Affairs, Consumer Lawyers of Hawaii, the Hawaii Medical Association, the Healthcare Association of Hawaii, Kaiser Permanente, and the Queen's Medical Center. The Judiciary Standing Committee on the Rules of Evidence (Standing Committee) testified in support of the intent, but opposed the bill in its present form. The Hawaii Association of Health Plans offered comments.

Several testifiers preferred language in S.B. No. 3279 (2006) on grounds it would protect statements that might be construed as admissions of guilt:

"Rule Apologies; medical care. (a) In any civil action that is brought against a health care provider, as defined in section 671-1, or in any arbitration proceeding that relates



to the civil action, any statement, affirmation, gesture, or conduct expressing apology, responsibility, liability, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that:

(1) Was made by a health care provider to the patient, a relative of the patient, the patient's survivors, or a health care decision maker for the patient; and

(2) Relates to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care

is inadmissible as evidence of an admission of liability or as evidence of an admission against interest."

The Standing Committee, on the other hand, recommended one rule applicable to all tortfeasors, as in S.B. No. 1339 (2007) or H.B. No 1253 (2007), rather than a special rule for health care providers. Your Committee notes that S.B. No. 1339, S.D. 1 (2007) contains language proposed by the Standing Committee.

Your Committee has amended this measure by:

- (1) Changing its effective date to July 1, 2059, to allow continued discussion; and
- (2) Making a technical, nonsubstantive change for clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 813, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 813, S.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 813	Committee Referral: HTH, JDL	Date: 3/2/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUYE, Lorraine R.				/
NISHIHARA, Clarence K.	/			
GABBARD, Mike	/			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">Russell S. Kohb</div>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes