



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Linda L. Smith
Senior Policy Advisor to the Governor

Before the

House Committee on Health

Friday, January 25, 2008
9:35 AM

HB 1992, HB 1995, HB 2071, HB 2151, HB 2161

Representative Green and Members of the Committee:

Thank you for the opportunity to testify. I would like to express my sincere gratitude to the Chair for agreeing to hear medical liability reform legislation in the Committee today. The Governor is committed to initiatives that expand access to quality health care in the State. I commend the Chair and the Committee for making a serious effort to work through this and other important health care issues.

Hawaii's health care system suffers because of a physician shortage, especially in the specialty areas. The Administration strongly believes that the enactment of medical liability reform legislation is one of the best ways to address this issue and to retain and recruit a strong physician workforce in our State. Many health care industry officials are here today who will articulate this problem and the need for reform. The time is now to come together to address their concerns.

Insurance Commissioner Schmidt has prepared detailed testimony on each of the bills before the Committee and the Administration will defer to him for analysis. As you may know, the Administration has introduced its own medical liability reform bill, HB3102/SB3024. We respectfully ask that the Committee schedule a hearing on our bill in the coming weeks. In short, the Administration's bill would:

- Cap non-economic damage awards to \$250,000;
- Establish a sliding scale on attorney contingent fees;
- Define "economic damages"; and
- Require that economic damages be allocated on the percentage of negligence.

The Administration understands that medical malpractice reform is a complex and emotional issue. Although we may not agree on all the details, we intend to work closely with you to get a bill passed this year.

Again, I commend the Chair for bringing this important issue before the Committee and thank you for the opportunity to testify.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON HEALTH
TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Friday, January 25, 2008
9:35 a.m.

TESTIMONY ON HOUSE BILL NO. 1995 – RELATING TO TORTS.

TO THE HONORABLE JOSH GREEN, M.D., CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports the intent of this bill, but prefers the Administration’s bill, H.B. No. 3102, which takes a comprehensive approach to medical liability reform.

The purpose of this bill and H.B. No. 3102 is to provide a more rational atmosphere for the practice of medicine in Hawaii and to reduce the cost of medical malpractice insurance for Hawaii’s health care providers. Both bills propose establishing a limitation on noneconomic damages in medical tort actions, with H.B. No. 3102 specifying \$250,000 and this bill specifying \$500,000.

The Department prefers H. B. No. 3102, because it addresses factors that are missing from H.B. No. 1995.

H.B. No. 3102 expressly defines “economic damages” as including all economic damages recoverable by plaintiffs, including past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business and employment opportunities.

H.B. No. 3102 eliminates joint and several liability for economic damages. Under joint and several liability, a plaintiff can collect the entire judgment from any liable defendant, regardless of how much of the harm that defendant's action caused. This approach has led to cases in which a doctor with a very minor part of the responsibility unfairly shoulders the burden of 100% of the damages. This approach discourages health care provider participation in necessary support procedures, since a small participation may result in 100% liability. Concerns with the joint and several liability approach are reflected in the health care provider's malpractice policy, resulting in increased premiums.

Additionally, the approach in H.B. No. 3102 is preferred, because it specifies that for noneconomic damages, the trier of fact shall enter a judgment of liability against each health care provider in proportion to the provider's negligence. It also prohibits a judgment from being entered against a health care provider who was not a named party or who has already been dismissed from the lawsuit.

The comprehensive approach taken by H.B. No. 3102 will stabilize the medical malpractice insurance market by allowing medical malpractice carriers to better predict the amount of claims and losses. Increased certainty will have the effect of decreasing or moderating premium costs.

Our support for the intent of this bill notwithstanding, it is respectfully requested that this Committee consider H.B. No. 3102 as an alternative to H.B. No. 1995. Thank you for the opportunity to testify on this measure.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 1995**

January 25, 2008

To: Chairman Josh Green and Members of the House Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in strong opposition to H.B. No. 1995.

The members of this committee heard extensive testimony from the proponents and opponents of similar legislation last year so I will not rehash many of the arguments we made last year and will stress some of the new facts we learned about.

First of all, the number of medical malpractice claims has dropped to 95 claims made during 2007 up to November 22, 2007. The data from MCCP indicates that 173 claims were filed in 2001 and 123 in 2006 and 95 (thru 11/22/07) in 2007. This clearly indicates that claims filed have been reduced by about 45% since 2001.

Further the data shows that there were an insignificant number of claims found to be frivolous and we know of no case filed in court that was found to be frivolous.

It is also important to reiterate that recent research shows that the highest MIEC (major medical malpractice insurer in Hawaii) rates in Los Angeles in 2007 are much higher than the highest rates in Hawaii. This is the case even where California has had a form of medical malpractice reform that the proponents have attempted to pass here for over 30 years. Here are some examples:

<u>Specialty</u>	<u>Hawaii</u>	<u>Los Angeles</u>
Neurosurgery	\$77,104	\$107,936
OB/GYN	\$61,684	\$ 86,348

Orthopedic Surgery	\$51,404	\$ 71,956
Family Practice	\$10,284	\$ 15,832

Generally, CLH objects to this bill for several reasons. Two of the major goals of tort law are compensation for the victim and deterrence of negligent behavior. The suggested cap on non-economic damages, as evidenced in this bill, clearly will adversely impact on adequate compensation to the victims who have suffered injury as a result of medical malpractice. Further, CLH has always urged that before drastic changes are made to the civil justice system, it is necessary that the legislature be provided with good reliable data and information in order to properly analyze the need for “reform”.

Specifically, the proposal is to limit awards by placing a cap on non-economic damages, such as pain and suffering and loss of enjoyment of life. CLH maintains that **caps are unfair, arbitrary, and unnecessary**. They unfairly punish the most severely affected victims, whose quality of life has been destroyed in many instances. The arbitrary nature of a cap also takes away the right of a jury to determine the proper damages for a particular injury. And it should be pointed out that where a victim has no economic damages, then that injured person is clearly unfairly limited by an arbitrary cap.

Example: A child is injured because of medical malpractice. There are really no economic damages because there is no wage loss and any recovery for medical expenses or long term care goes to third parties who provide these services. The devastation to the child and the family is enormous in terms of the grief experienced and the fact that they must live with this situation for the rest of their lives. Capping non economic damages for this kind of victims is especially unfair.

I would also like to first emphasize that we must all at least acknowledge that the basic cause underlying the on-going medical malpractice issue is the fact that there are medical errors that occur and there is medical malpractice committed where patients are injured or die. The focus behind the so-called medical malpractice “reform” has always been and still is to reduce potential recovery for the injured patient. CLH is of the opinion that the focus should be on protecting the patients and properly compensating the injured patients, and studying the medical system to prevent medical errors and medical malpractice and the resulting injuries to patients?

Neither the Hawaii Medical Association nor the doctors who have appeared before you to testify on this issue refute the fact that medical errors or medical malpractice happens and injures or kills people. They have never disputed the facts published in 1999 by the Institute of Medicine which estimated that medical errors contribute to as high as 98,000 deaths per year, and that the annual cost to hospitals stemming from these errors has been estimated to range from 17 to 29 billion dollars. (The reference was to deaths and did not include other injuries.) The obvious conclusion is that if we can reduce the incidents of medical error and malpractice, the item that health providers complain about, malpractice premiums should be substantially reduced.

We strongly suggest that all of the basic information that has been presented be reviewed before any major policy change is made. The facts have shown that (1) the number of cases has been reduced significantly; (2) that there are hardly any claims or lawsuits that were found to be frivolous either by the courts or the MCCP; (3) the rates in California where there has been reform are higher than in Hawaii; (4) The State of

Hawaii data indicates that the number of practicing physicians in Hawaii has increased each year rather than decreased.

For these and many other reasons CLH strongly opposes this bill.

HAWAII PSYCHIATRIC MEDICAL ASSOCIATION

1360 S. Beretania Street, 2nd Floor, Honolulu, HI 96814

Ph: (808) 263-3070 Fax: (808) 262-5966 www.Hawaiiipsychiatric.org

Public Access
Please deliver
5 copies to Clerk in Rm. 436
HLT: 1/25/08 at 9:35 in Rm.
329

HOUSE COMMITTEE ON HEALTH

Chair, Rep. Joshua Green, MD

Vice-Chair, Rep. John Mizuno

DATE: Wednesday, January 25, 2007, 9:35 am
Conference Rm 329, State Capitol

HB 1992 Relating to Medical Liability

HB 1995 Relating to Torts

POSITION: **SUPPORT**

Members of the Committee on Health:

The Hawaii Psychiatric Medical Association submits testimony in support of HB 1992, Relating to Medical Liability and HB 1995, Relating to Torts both of which have the intent to limit noneconomic damages.

The lack of malpractice protections in Hawaii has given cause for concern among Hawaii's physicians. Not only are we seeing an exodus of providers from Hawaii partly due to unchecked malpractice awards, it is also an identified barrier to attracting physicians to Hawaii, expanding practices to rural areas and encouraging John A. Burns School of Medicine residents to remain in Hawaii to practice medicine.

Reforms are necessary in order to correct the specialist shortages, physician shortages in rural areas. Patient care is suffering in Hawaii. It is a complex issue of which medical tort reform is an integral piece.

Thank you for your consideration to pass these measures.

HAWAII PSYCHIATRIC MEDICAL ASSOCIATION

HOUSE COMMITTEE ON HEALTH
Rep. Josh Green, M.D., Chair

Conference Room 329
January 25, 2008 at 9:35 a.m.

Testimony in support of HB 1992 and HB 1995

I am Coral Andrews, Vice President of the Healthcare Association of Hawaii, which represents the entire spectrum of health care, including acute care hospitals, two-thirds of the long term care beds in Hawaii, as well as home care and hospice providers. Rich Meiers is attending to business in Washington, D.C. Thank you for this opportunity to testify in support of HB 1992 and HB 1995, both of which take steps toward the medical tort reform that is needed in Hawaii.

Hospitals fully support compensation for patients who have been injured by medical negligence. Injured patients should receive all economic damages, such as lost wages and medical expenses. However, medical malpractice insurance rates have been rising so fast, especially for certain specialties, that some physicians in certain states have moved to other states with lower premiums or chosen other fields of employment. That is now happening to Hawaii.

In response to a medical liability crisis in 1975 similar to what is now happening in other states, California passed the Medical Injury Compensation Reform Act (MICRA). Since then, California hospitals, physicians, and patients have been spared the crisis that many other states are now experiencing. MICRA guarantees injured patients full payment for lost wages and medical expenses, but reasonably limits the amount that can be awarded for non-economic damages and attorneys' contingency fees.

MICRA's provisions enable California health care professionals to focus on providing high quality care without engaging in costly defensive medicine practices just to protect themselves against lawsuits. Because of MICRA, California now has some of the lowest malpractice premiums in the nation.

Hawaii usually follows trends on the mainland, and we are now facing a medical malpractice crisis. Emergency room physicians are disproportionately affected.

The Healthcare Association supports the following:

- (1) Limiting noneconomic damages to \$250,000;
- (2) Limiting attorneys' fees;
- (3) Assessing damages in direct proportion to the degree of negligence assigned to each party; and
- (4) Providing added protections to emergency room physicians.

Thank you for this opportunity to testify in support of HB 1992 and HB 1995.

mizuno1-Edgar

From: Galen Chock [gchock@aap.net]
Sent: Thursday, January 24, 2008 8:37 AM
To: HLTtestimony
Subject: HB 1992, HB 1995

Sergeant of Arms: Please deliver five (5) copies of this e-mail testimony to Rm 329 for the House Health Committee Meeting on Friday 1/25/08 @ 0935. Thank you

Honorable Representatives Green and Mizuno, COMMITTEE ON HEALTH:
HAAP understands that you will be hearing **HB 1992 and HB 1995** Relating to Medical Liability and Relating to Torts on Friday, January 25, 2008 @ 9:35 a.m. in Conference Room 329.

We are unable to appear in person, however, the Hawaii Chapter of the American Academy of Pediatrics strongly supports HB 1992 & HB 1995. A cap of \$250,000 for non-economic damages and limits on attorney fees in order to get more money to the injured plaintiff will improve the Hawaii health care environment and enhance patients' ability to access quality health care in Hawaii.

Respectfully

Galen Chock MD
President
Hawaii Chapter of the American Academy of Pediatrics (HAAP)
1380 Lusitana St. Suite 501
Honolulu, HI 96813
(808) 521-6030, fax (808) 521-6273
gchock@aap.net

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mizuno1-Edgar

From: Tabrah, Frank [ftabrah@straub.net]
Sent: Thursday, January 24, 2008 9:22 AM
To: HLTtestimony

: Please deliver 5 copies to room 329 for the House Health Committee hearing, Friday, 1/25/08, 9:35am.

January 25, 2008

*To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee*

*From: Frank L Tabrah MD
2333 Kapiolani Blvd. Apt. 3408, Honolulu, HI
808 947 1739*

*Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance*

I am a Hawaii physician and I strongly support HB1992 and HB1995.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

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1/24/2008

Please deliver 5 copies to room 329 for the House Health Committee hearing, Friday, 1/25/08, 9:35am.

January 25, 2008

*To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee*

*From: Kimberley Gerard
91-228 Wakamalii Place
Kapolei, HI 96707
(808) 256-7247*

*Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance*

I am currently a second-year medical student and I plan to practice medicine in Hawaii. I strongly support HB1992 and HB1995, because it will directly affect my decision to practice medicine in Hawaii or on the mainland.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

Sincerely,

KG

Kimberley Gerard

mizuno1-Edgar

From: Alexandra Takayesu [agt@hawaii.edu]
Sent: Wednesday, January 23, 2008 10:48 PM
To: HLTtestimony
Subject: Medical Liability Testimony

Please deliver 5 copies to room 329 for the House Health Committee hearing, Friday, 1/25/08, 9:35am.

January 23, 2008

To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee

From: Alexandra Takayesu
323 Kepa Rd.
Kula, HI 96790

808-264-5355

Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance

I am a Hawaii medical student from Maui and I strongly support HB1992 and HB1995.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

Alexandra Takayesu

January 23, 2008

To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee

From: James McGreevy, MD
5900 Waipouli Road, Kapaa HI, 96746
651 523-2520

Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance

I have practiced surgery in Kauai for the last 5 years. I have recently relocated my practice to the mainland. This has come at a great cost to the community hospital I supported for the last several years. One of the reasons I have just left Hawaii is the heightened medical legal climate. I personally have been subjected to legal scrutiny which I consider frivolous and unfounded. Still these claims take a tremendous emotional toll on myself and an excessive amount of time away from my patients and family who are otherwise requesting my services and time. Something needs to be done to reduce the incentives to pursue medical-legal action in Hawaii. I will keep my Hawaii Medical License for now but I will not return to that state until something is done about the Tort laws. I strongly support HB1992 and HB1995.

These bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

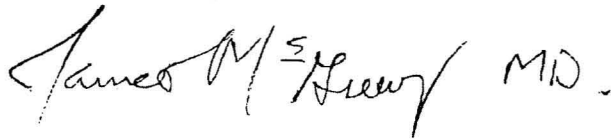
I oppose HB2071, HB2151 and HB2161 because I only see where they will allow more access to malpractice insurance, they do nothing to deal with the problems causing this insurance crisis. These bills will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements. I am another physician who loves Hawaii but I find the working environment unfavorable with low poor reimbursement and high malpractice premiums. The medical-legal climate in Hawaii is hostile and this contributed to my decision to leave the state.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

James McGreevy, MD

A handwritten signature in black ink that reads "James McGreevy MD". The signature is written in a cursive style with a large initial "J" and "M".

mizuno1-Edgar

From: Scott Harvey [sharvey5@mac.com]
Sent: Thursday, January 24, 2008 8:40 AM
To: HLTtestimony
Subject: Testimony

January 25, 2008

*To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee*

*Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance*

I am a Hawaii Medical Student and I strongly support HB1992 and HB1995.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements. As a future physician, I hope to practice and serve the Hawaiian Public. However, I keep hearing from physicians that it is too difficult to maintain a practice here due to the laws currently en-stated. As a result, physicians are leaving Hawaii and its residents are unable to obtain medical care. I hope this may change as I will get into practice so that I may stay in Hawaii.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

Scott A Harvey

John A Burns School of Medicine
651 Ilalo Street
Honolulu, HI 96813
sharvey@hawaii.edu
808-772-2700

mizuno1-Edgar

From: Johnson, Sidney MD [Sidney.Johnson@kapiolani.org]
Sent: Thursday, January 24, 2008 12:07 PM
To: HLTtestimony
Subject: Medical Liability/tort reform

Please deliver 5 copies to room 329 for the House Health Committee hearing, Friday, 1/25/08, 9:35am.

*To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee*

*From: Sid Johnson, MD
Pediatric Surgery
600 KMCWC
1319 Punahou St
Honolulu, HI 96825*

*Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance*

I am a Hawaii physician and I strongly support HB1992 and HB1995.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

Sid Johnson

Sid Johnson, MD
Pediatric Surgery
General, Thoracic and
Minimally Invasive Surgery

KMCWC suite 600
1319 Punahou Street
Honolulu, HI 96826
(808)265-6754

1/24/2008

Please deliver 5 copies to room 329 for the House Health Committee hearing, Friday, 1/25/08, 9:35am.

January 25, 2008

*To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee*

*From: Dr. Gautam A. Deshpande, MD
347 N. Kuakini St, Medical Education 8th Floor, Honolulu, HI 96817
832-215-3120*

*Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance*

I am a Hawaii physician and I strongly support HB1992 and HB1995.

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I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

1/24/2008

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care. As a new physician in Hawaii and one dedicated to providing much-needed care to Hawaii's underserved and culturally diverse population, I am saddened that I have been forced to consider moving back to California or Texas due to the lack of tort reform in this state.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.

Gautam A. Deshpande, MD

--

UH Internal Medicine Training Program
Assistant Clinical Professor
Kuakini Hospital
Chief Medical Resident

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May Mizuno

From: Linda Jenks [linda.jenks@gmail.com]
Sent: Thursday, January 24, 2008 1:14 PM
To: HLTtestimony
Subject: Medical Liability Reform

January 25, 2008

To: Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair
House Health Committee

From: Linda Jenks, M.D.
98-1079 Moana Lua Rd, Aiea, HI 96701
808-371-2154

Re: HB 1992 Relating to Medical Liability
HB 1995 Relating to Torts
HB 2071 Relating to Insurance
HB 2151 Relating to Captive Insurance
HB2161 Relating to Medical Malpractice Insurance

I am a Hawaii physician and I strongly support HB1992 and HB1995.

Both bills will help to stabilize medical malpractice insurance premiums. For a cap on non-economic damages, I support a \$250,000 cap, which has been proven by other states to be effective in stabilizing premiums. I also support limits on attorney fees, which will give more money to the injured plaintiff.

I oppose HB2071, HB2151 and HB2161 because they will not stabilize malpractice insurance premiums.

Hawaii is unable to recruit and retain an adequate supply of physicians due to the lack of liability reform and other issues such as inadequate reimbursements.

As a result, physicians are leaving Hawaii and its residents are unable to obtain the medical care.

Medical liability reform is an important part of the solution. Texas and other states have had great success in improving access to care since passing reforms.

Thank you for the opportunity to provide this testimony.



January 25, 2008

The Honorable Josh Green, M.D., Chair
The Honorable John Mizuno, Vice Chair

House Committee on Health

Re: HB 1995 – Relating to Torts

Dear Chair Green, Vice Chair Mizuno and Members of the Committee:

My name is Rick Jackson and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Management Alliance Association
HMSA
Hawaii-Western Management Group, Inc.

MDX Hawai‘i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in support of HB 1995 which would lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates. HAHP supports the intent of this bill as a good first step toward helping to contain the spiraling cost of medical malpractice insurance.

HAHP believes the time has come for the Legislature to seriously consider significant changes to Hawaii statutes regarding medical malpractice, including especially the key elements of this bill, namely establishing a cap on non-economic damage awards.

We agree with statements made by local physician organizations that the current medical tort system drives significant “defensive medicine” costs and has led to neighbor island shortages in key surgical specialties. In our role as health insurance providers, the

- *AlohaCare* • *HMAA* • *HMSA* • *HWMG* • *MDX Hawaii* • *UHA* • *UnitedHealthcare* •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org

members of HAHP see these facts daily in our medical claims costs and in limitations in the numbers and types of our contracted physicians on neighbor islands.

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink that reads "Rick Jackson". The signature is written in a cursive style with a long horizontal flourish at the end.

Rick Jackson
President

January 25, 2008

Representative Josh Green, M.D.
Representative John Mizuno
Health Committee Members

RE: HB 1992, HB 1995, HB 2071

I am a volunteer advocate and I am here today to share with you my testimony regarding the current access to physician care crisis in the state. Today I am voluntarily representing thousands of patients in this state who have lost their doctors or have not been able to get timely medical care.

I lost two of my doctors this past year. My internist closed her practice with three months notice. Her husband is a cardiologist and has recently been sued twice. They have young children and my Doctor told me she could not sleep at night due to the stress these suits have caused in their family. She was worried about getting sued herself and this was what caused her to close her practice. She has been doing paper work for her husband in his practice the past few months and in a note she sent me she said, "now he can come home and have dinner with the family two nights a week instead of only one." This is insane! Doctors should be able to have lives too.

My other Doctor was Dr. Michael Hahn, a board certified orthopedic hand specialist. He left and went to Texas where they have passed major malpractice reform legislation. He e-mailed his former partner here and said he can now practice medicine as he was trained to do in medical school. He no longer orders unnecessary tests for patients to protect himself from malpractice suits. He doesn't have to practice defensive medicine. His stress is gone and he enjoys going to work each day. In February 2006 Dr. Hahn diagnosed me with carpal tunnel in both of my hands and was treating me for this problem. In the summer of 2007 I read in the paper that he had gone to Texas. I was upset! In October 2007 my right thumb went to sleep. It didn't wake up. I went to see a new Doctor and decided to have surgery on November 28, 2007. My new Doctor is an orthopedic surgeon but not a board certified hand specialist. I had to take my chances because there wasn't anyone else to help me. I couldn't just wait until my whole hand went to sleep, never woke up and I had permanent nerve damage. He is originally from Hawaii and recently returned. His wife is a radiologist and the only way they could come home was if she could keep her practice. So she continues her practice to the mainland via the internet as a radiologist..

This is the reason I volunteered to become involved in this issue. This is not a partisan issue. This is not a doctor vs. attorney issue. THIS IS NOT EVEN A MONEY ISSUE. The state doesn't have to pay for anything. That's the best news I've heard all year! THIS IS A PEOPLE ISSUE. THIS IS A PATIENT ISSUE. Since I have been involved I have heard one horror story after another from patients and your constituents. Story after story from neighbor island people who have lost an eye, lost a foot, lost a leg because it took 10 or more hours to medevac them to Oahu. Every time I talk to someone they tell me about losing their doctor. My good friend was also Dr. Hahn's patient. Dr. Hahn did arthroscopic surgery on another friend. My surgery nurse lost two doctors. A couple I met at a windward legislative meeting both went to my internist. My internist had 3,000 patients. Where are 3,000 patients going to go in Kailua? The couple has been unable to find a new doctor. Every doctor they call said they are not taking new patients and/or will not take Medicare patients. Senior citizens are usually on some kind of medication, and if you stop it on a moments notice it can be life threatening. This happened to me. I had to get my OB/Gyn to refill my prescriptions from my internist.

This issue is not about eliminating the option to obtain damages for negligence in catastrophic cases. When definite malpractice and permanent damages/disabilities occur people have the right to remuneration. My son was born with cerebral palsy. He is spastic quadriplegic, has never walked one step and has spent his entire life in a wheelchair. There were malpractice issues when he was born. That was 41 years ago before machines and monitors. I did not sue anyone. I have lived with his disability for 41 years so I know how hard it can be. I have walked the walk.

The following Doctors from the windward side of Oahu have closed their practice and/or left Hawaii in the past two years: Dr. Kerry Hubbs, orthopedic surgeon; Dr. Terry Smith, the only orthopedic back surgeon; Dr. Neil Katz, orthopedic surgeon; Dr. Richard Rose, orthopedic surgeon; Dr. Michael Hahn, the only board certified orthopedic hand surgeon; Dr. Helen Ing, internist; Dr. Jeffrey Ryan, family practice; Dr. Cynthia Mosbrucker, OB/Gyn; Dr. Theodore Teruya, vascular surgeon; Dr. Sam Smith, anesthesiologist, only here six months. Dr. James F. Pierce, a neurologist at Queens, retired November 30, 2007. In his Star Bulletin notice of retirement he said, "I tried unsuccessfully for 1 1/2 years to find someone to continue my practice. Cost of living in Hawaii, ever-rising costs in the medical practice and inadequate reimbursements..... do not cover these needs" The Doctors who have left have relocated to states that have passed malpractice reform.

Dr. Linda Rasmussen is taking up the slack for these orthopedic surgeons who have left. She is about to kill herself. Last Saturday she took care of one joint patient who was refused treatment by Queens. On Martin Luther King Day she did seven joint replacements. She is seeing 25 patients in her half-day clinics. Her personal friends are calling her or showing up at her front door with their orthopedic problems because they cannot get an appointment to see her through her office staff. I know this is true because I pulled strings one day to see her and waited 2 hours in her office. Doctors cannot continue to work like this without drastic consequences to their health and family.

OB/Gyn is in chaos in the state right now. There is not a hospital Ewa of Queens and Kapiolani that delivers babies. That is where the majority of young families who are of child bearing age live on Oahu. An OB/Gyn who practices in Wahiawa sends his patients to Kapiolani as soon as they begin contractions. He says if they wait and there are traffic problems they won't make it. There is only one OB/Gyn delivering babies on Maui. Molokai and Lanai have NONE. These patients have to come to Oahu 1-2 weeks before their due date and stay here until they give birth to make sure they are here when they go into labor. Once you are in labor the airlines won't let you on an airplane. You're not suppose to fly in your last month of pregnancy either. The OB/Gyn in the Kahuku area is discontinuing delivering babies. She said she can no longer drive back and forth between Kahuku and Castle Medical Center to to the deliveries. Kahuku Hospital closed its obstetrics department. When mothers are forced to deliver babies in unsafe circumstances the chances of developmental disabilities increases drastically and developmental disabilities becomes another cost to the state.

During the past couple of weeks I have read several newspaper articles regarding the chaotic situation with medical and health care in our state. It is more than I can comprehend. The idea of giving UH medical students tuition waivers if they will practice in the "country" is being discussed. But these students will still have to pay high malpractice premiums and receive low reimbursements even if they are in the "country." The Hawaii Health Care Systems Corporation is broke. They can't pay their bills however they say they are "putting forth a huge effort to recruit, hire and contract physicians" to replace those who are leaving." Crazy! Maui Memorial Hospital talks of building a new heart unit and they are going to hire an open heart surgeon, and pay him/her \$1,000,000 a year with my tax dollars. I don't think so! How are they going to find an open heart surgeon on Maui when patients can't even get an internist in Kailua? Dr. Greg Sakamoto, who graduated from Waiialua High School and UH medical school, was recently named chief resident of the dermatology program at Harvard. Why isn't he practicing medicine at home? It is way past time for this state to get its health care act together. Obviously everyone is working in isolation. We need to address the real problems as to why our physicians are leaving and not create another revolving door. If there are no doctors left in the state there will be no need for hospitals. Without doctors you can't run a hospital.

"I believe in my heart and with my whole being we can make Hawaii a better place. To do that we must embrace change not as a political slogan, but as a way of life." This is a quote from Speaker Calvin Say's opening day message. He is right we must embrace change and forget the politics. Malpractice insurance must be changed in such a way to reduce the malpractice premiums so that our Doctors will stop leaving the state and we will have quality of life. The Texas model is an excellent example for us to follow.

It has solved Texas' problem with malpractice. I hope you will really take Speaker Say's words to heart and create change in the malpractice area.

The health care situation is scary, really scary. In fact it scares me to death. However, it might be a good thing if we all got scared to death, because that would solve our crisis. Seriously, it's not just about us patients, it's about you legislators also. You are being affected the same as us. If you haven't felt the impact of the malpractice problem yet, your turn will come, it's only a matter of time. You are the only ones who can help us and yourselves. I am putting my trust in you to solve the physician shortage in our state this session. I have heard Doctors testify that the system is broke, in crisis and chaos. By passing malpractice reform this year it will be a big step in solving the health crisis in this state. Will you please help because this is a situation in which we can not help ourselves. Again this is not a partisan issue, nor an attorney vs. doctor issue. The Legislature needs to take care of their constituents by solving this problem NOW. Please help us and thank you for listening.

Sincerely,

A handwritten signature in cursive script that reads "Kathy F. Campbell". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Kathy F. Campbell

mizuno1-Edgar

From: Diane Holschuh [triplef@interpac.net]
Sent: Thursday, January 24, 2008 2:16 PM
To: HLTtestimony
Subject: HB 1992 and 1995

Please deliver the required number of copies to Room 329 for the House Health Committee hearing Friday, 1/25/08, 9:35 a.m.

January 25, 2008

TO: Rep. Josh Green, M.D., Chair, Rep. John Mizuno, Vice Chair, and Members, House Health Committee
FROM: Fred C. Holschuh, M.D., P.O. Box 2004, Honokaa, Hawaii 96727, (808) 640-3181
Re: HB 1992 Relating to Medical Liability and HB 1995 Relating to Torts

I am a Hawaii physician and am testifying in strong support of HB 1992 and HB 1995. Both bills will provide medical malpractice relief. I would urge a cap on non-economic damages be set at \$250,000.00.

Medical liability reform is an important part of solving the serious problem of limited access to medical care. This is especially true on the island of Hawaii.

Thank you for the opportunity to provide testimony.

Respectfully,

Fred C. Holschuh, M.D.

1/24/2008

May Mizuno

From: harry [docharry@hawaii.rr.com]
Sent: Thursday, January 24, 2008 8:12 PM
To: HLTtestimony
Subject: Testimony

Rep. Josh Green, Rep. John Mizuno, and the House Health Committee:
Relating to the hearing on Fri, Jan. 25, the Hawaii Section of the American College of Obstetricians and Gynecologists (ACOG) strongly supports HB 1992 Relating to Medical Liability, HB 1995 Relating to Torts, and HB 2071, Relating to Insurance. Without these measures, women will be increasingly pressed to have access to health care, and bright students who have the potential to be excellent physicians will be discouraged from pursuing a career in medicine. Everyone wants the best care for their mother, sister, or other female family member, and these bills will help insure that women will have access to the best medical care possible.

Sincerely,
Harry N. Yoshino, M.D.
Chair, ACOG Hawaii Section

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Sincerely,
Harry N. Yoshino, M.D.
Chair, ACOG Hawaii Section