

**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 1995, RELATING TO TORTS..

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: January 25, 2008 **TIME:** 9:35 AM

LOCATION: State Capitol Room 329
Deliver to: State Capitol, Room 436, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
John Cregor and Caron Inagaki, Deputy Attorneys
General

**LATE
Testimony**

Chair Green and Members of the Committees:

The Department of the Attorney General strongly supports this bill and its purpose and intent for all of the reasons set forth in section 1 of the bill.

We do note that H.B. No. 1995 provides that the "cap" or limitation on non-economic damages is set at \$500,000, with a limitation on damages for "pain and suffering" of \$375,000. Pain and suffering is an element of non-economic damages. The Department of the Attorney General suggests that this Committee consider setting the non-economic damages cap at \$250,000, which is the figure generally proposed in similar legislation throughout the United States and that proposed before the United States Congress. If this is done, the separate internal cap on pain and suffering can be deleted.

We respectfully request passage of this measure, with the proposed amendments.



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January 25, 2008

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

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
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Re: HB1995 Relating to Torts

The Hawaii Medical Association strongly supports HB1995.

HB1995 proposes to establish a maximum award of \$500,000 for non-economic damages in medical malpractice cases.

The HMA supports the establishment of a cap because it will help to stabilize now volatile medical malpractice insurance premiums, which is a major cause of Hawaii's patient access to care crisis.

The HMA requests an amendment to lower the \$500,000 cap to a \$250,000 cap on non-economic damages. A \$250,000 cap has been proven to stabilize otherwise volatile premiums.

Non-economic damages are compensation for pain and suffering, loss of consortium and loss of enjoyment. These are difficult damages to quantify and a cap would establish a much needed standard.

The HMA proposes no cap on economic damages, which are compensation for past and future medical expenses, rehabilitative expenses, living expenses and lost income or income-equivalents (in the case of a homemaker, for instance). These damages can be quantified.

The HMA proposes no cap on punitive damages, which is compensation intended to punish the defendant.

In other states, a cap on non-economic damages has been powerful tools for stabilizing medical malpractice insurance premiums in other states.

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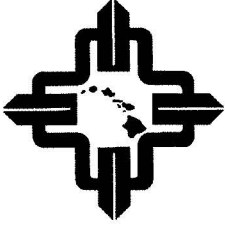
**LATE
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Formerly in crisis, caps on non-economic damages has produced major improvements to patient access to care in the state of Texas, including:

- Licensing 3324 new doctors in 2007, including a net gain of 186 obstetricians
- Bringing specialty care to underserved areas, including the addition of 189 physicians in Rio Grande Valley and other rural areas
- Stabilized and reduced medical malpractice insurance premiums
- Four new admitted, rate-regulated malpractice insurance carriers (Advocate MD of the Southwest, Medical Liability Insurance Company of America, Medicus Insurance Company and the Physicians Insurance Company).

In order to address Hawaii growing patient access to care crisis, the Hawaii legislature needs to take major steps. HB1995 represents positive change that needed now to prevent failure of Hawaii's healthcare system.

Thank you for the opportunity to testify on this matter.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

LATE
testimony

House Committee on Health
Rep. Josh Green M.D., Chair
Rep. John Mizuno, Vice Chair

January 25, 2008

9:35 a.m.

Conference Room 329
State Capitol

Testimony Supporting HB 1995 Relating to Torts
Limits noneconomic damages in medical tort actions to \$500,000.

By Thomas M. Driskill, Jr.
President and Chief Executive Officer

Good morning Chair Green, Vice Chair Mizuno and members of the Committee on Health. Thank you for the opportunity to testify in support of HB 1995, relating to torts.

The impact of the medical tort liability system on Hawaii's healthcare system is strongly evident with the increasing concerns of physicians who continue to cite medical malpractice liability as a reason for closing their practices and leaving Hawaii. In addition to a number of efforts presently being directed to responding to the escalating cost of healthcare and improving healthcare availability and access, a combination of provisions are equally important to make Hawaii a better environment in which to practice medicine, including caps on noneconomic damages and attorneys fees.

As the state authorized safety-net health care system, HHSC strongly supports this measure to improve the situation for physicians and patients by addressing the medical malpractice liability system and improving access to medical care in Hawaii. Thank you.

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