

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.

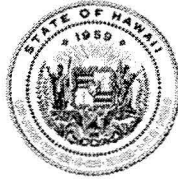
Hawaii's health care system suffers because of a physician shortage, especially in the specialty areas. The Administration strongly believes that the enactment of medical liability reform legislation is one of the best ways to address this issue and to retain and recruit a strong physician workforce 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
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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Phone Number: (808) 586-2850
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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. 2161 – RELATING TO MEDICAL MALPRACTICE INSURANCE.

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 more comprehensive approach to addressing the increasing cost and unavailability of medical malpractice insurance in Hawaii.

This measure proposes establishing a domestic medical malpractice mutual insurance company (“MMMIC”) to provide medical malpractice insurance coverage and related services to physicians licensed in Hawaii.

This legislation appears to be modeled very closely after the Hawaii Employers’ Mutual Insurance Company (“HEMIC”), which was established in Hawaii Revised Statutes (“HRS”) chapter 431:14A. This measure is also similar to H.B. No. 2151, the previous bill on today’s agenda.

The bill exempts the MMMIC from the surplus requirements of domestic mutual insurers for a period of 10 years. In order for the MMMIC to be established with

reasonable actuarial standards and sound financial integrity, it would have to maintain a minimal level of capital and surplus relative to the volume of risk it insures.

This bill also appropriates an unspecified sum from the general fund for fiscal year 2008-2009 for the Commissioner to develop MMMIC.

Currently, there are a limited number of carriers writing medical malpractice in Hawaii; the two major writers are physician-owned non-profit reciprocal insurers. Most of the business is provided through a number of other entities, such as private cooperative indemnity corporations under HRS chapter 435E, risk purchasing groups and risk retention groups under the federal Liability Risk Retention Act and HRS chapter 431K, and captive insurers under HRS chapter 431:19.

It is unclear whether the MMMIC is intended to replace or supplement the voluntary commercial insurance market for medical malpractice insurance in Hawaii. In any case, the Department believes that any measure that may have the unintended effect of displacing the voluntary market should be averted.

The Department prefers the comprehensive approach taken in H. B. No. 3102, because it will stabilize the medical malpractice insurance market by allowing medical malpractice insurance companies to better predict the amount of claims and losses and allow for risk sharing among its insureds. 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. 2161.

Thank you for the opportunity to testify on this measure.

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



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON HEALTH
Representative Josh Green, M.D., Chair
Representative John Mizuno, Vice Chair

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

H.B. 2161

Chair Green, Vice Chair Mizuno, and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** H.B. 2161. The bill would create a new mutual insurance company modeled after the Hawaii Employers Mutual Insurance Company (HEMIC) to provide medical malpractice insurance to physicians in the State of Hawaii.

Hawaii Insurers Council respectfully opposes this bill on the basis that currently there is an existing market to insure medical malpractice risks. It is a highly specialized field of the insurance industry, which includes physician-owned reciprocal insurers as major players. The Council respectfully questions whether the existing market is so inadequate as to require the Legislature to create a new market entrant.

We respectfully request that H.B. 2161 be held.

Thank you for the opportunity to testify.

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.

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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.

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

January 23, 2006

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.

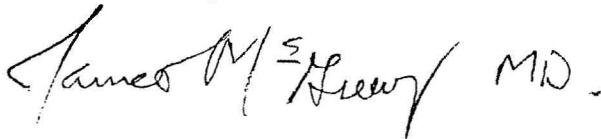
I oppose HB2071, HB2151 and HB2161 because I only see where they will allow more access to malpractice insurance, they do nothing to deal with the problems causing this insurance crisis. These bills will not stabilize malpractice insurance premiums.

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 the first name "James" and the last name "McGreevy" being more prominent, and "MD" written in a simpler font at the end.

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

mizuno1-Edgar

From: Galen Chock [gchock@aap.net]
Sent: Thursday, January 24, 2008 8:44 AM
To: HLTtestimony
Subject: Opposition to HB 2071, HB 2151, HB 2161

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 2071, HB 2151 and HB 2161** Relating to Insurance, Relating to Captive Insurance and Relating to Medical Malpractice Insurance, 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 is opposed to HB 2071, HB 2151 and HB 2161. These bills will not improve the Hawaii health care environment, will not enhance patients' ability to access quality health care in Hawaii and would only serve to divert scarce resources to nonproductive endeavors.

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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1/24/2008

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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

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.

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

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

This message and its contents are strictly provided for the recipient of this e-mail. Any unauthorized viewing of this e-mail by other parties for which it is unintended shall be considered as a breach of confidentiality rules as defined by UH Internal Medicine and Kuakini Hospital.

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.

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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 2161 – Relating to Medical Malpractice Insurance

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 2161 which could offer another alternative to physicians in Hawaii through the creation of a mutual medical malpractice insurer. Through the offering of two different classes of coverage, this entity modeled after HEMIC, may be able to offer lower medical malpractice insurance premiums thus assisting physicians with the spiraling cost of medical malpractice insurance.

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 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.

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

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Jackson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rick Jackson
President

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN SUPPORT OF H.B. NO. 2071, HB No. 2151,
and HB No. 2161**

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 support of the purpose of several bills; namely, H.B. No.2071, H.B. No. 2151, and H.B. No. 2161.

CLH agrees with and supports the purpose of these bills which attempts to establish alternatives to the medical malpractice insurance companies currently offering insurance in Hawaii, whether it be a relief fund, a captive insurance company, or a mutual insurance company. CLH has testified in past hearings that because Hawaii's population is not large enough to have many insurance companies in "specialty" lines (i.e., only for medical malpractice insurance) write policies here, it would be prudent to look at other alternatives to be supplemental in the marketplace. Being that this is just a fact that we all have to deal with, CLH feels that these bills, if any become reality, could help to alleviate the cost of medical malpractice insurance. In that sense we support the purpose of these bills.

As to the actual funding for the various concepts outlined in these bills CLH does not have enough information to comment on the amount of funding that would be deemed adequate for this undertaking and leaves that decision to this committee and the committee on Finance.

Thank you for the opportunity to testify.