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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Friday, February 1, 2008
8:00 a.m.

TESTIMONY ON HOUSE BILL NO. 2414 – RELATING TO HEALTH

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 defers to the Department of Health and limits its comments to section 2 of the bill. The Department supports the intent of section 2 of the bill and offers suggested amendments.

The purpose of section 2 of the bill is to revise Hawaii Revised Statutes § 663-1.5 by providing an exemption from civil liability for any licensed physician who practices in a “health professional shortage area”, where the physician exercises due care. “Health professional shortage area” is defined as an area of the State designated by the U.S. Department of Health and Human Services as having shortages of primary, dental, and mental health care providers.

The Department believes that it is essential that all of our citizens have full access to necessary medical treatment provided by trained physicians. Providing

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reasonable limits on liability for doctors who agree to practice in underserved areas will help ensure that our citizens have access to and receive appropriate care.

Rather than provide an exemption for all civil damages, the Department suggests adding language such that the exemption does not apply where the physician acts with gross negligence or wanton acts or omissions, such that page 4, lines 10-15, read as follows:

(d) Any physician licensed to practice under the laws of this state or any other state practicing medicine as provided under chapter 453, in a health professional shortage area of the state, shall not be liable for any civil damages, unless the damages result from the physician's gross negligence or wanton acts or omissions.

We thank this Committee for the opportunity to present testimony on this bill.

**PRESENTATION OF THE
BOARD OF MEDICAL EXAMINERS**

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Friday, February 1, 2008
8:00 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 2414, RELATING TO HEALTH.

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

The Board of Medical Examiners ("Board") thanks you for the opportunity to provide written testimony on H.B. No. 2414, Relating to Health. The Board takes no position on the merits of this bill but would like to recommend two revisions.

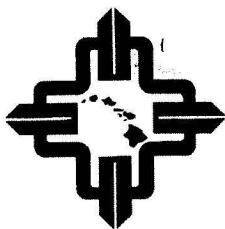
As you are aware, the Board regulates osteopathic physicians and physicians and believes both have equal rights and responsibilities and the ability to practice the full range and scope of medicine. In light of this, where physician is mentioned in the bill, so should osteopathic physicians. Amendments to accomplish this would include:

- Page 1, line 7, to read as follows: "insurance for a physician **or osteopathic physician** licensed under chapter 453 **or chapter 460, as the case may be,** with a..."
- Page 4, lines 11-12, to read as follows: "this state or any other state practicing medicine **or osteopathic medicine** as provided under chapter 453 **or 460, as the case may be,** in a health professional shortage area of the..."

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Also, by way of explanation as to the Board's suggested wording for our proposed amendment "**or 460, as the case may be**": earlier, this Committee heard testimony on the Board's administration bill, H.B. No. 3105. That bill proposes to regulate physicians and osteopathic physicians under one chapter, namely chapter 453, HRS, and to repeal chapter 460, HRS, which regulates osteopathic physicians. Whether the Board's bill passes or not, the amendments we propose for H.B. No. 2414 will work,.

The Board thanks you for the opportunity to provide written comments on this bill.



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

"Touching Lives Every Day"

The House of Representatives

Committee on Health

Representative Josh Green, M.D., Chair
Representative John Mizuno, Vice Chair

Committee on Human Services & Housing

Representative Maile Shimabukuro, Chair
Representative Karl Rhoads, Vice Chair

February 1, 2008 at 8:00 a.m.
Conference Room 329
Hawaii State Capitol

Testimony Supporting HB 2414 Relating to Health

Provides Good Samaritan exemption from civil damages for physicians practicing medicine in health professional shortage areas and rural areas of the state

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

Thank you for the opportunity to provide testimony in support of HB 2414, that provides Good Samaritan exemption from civil damages, and also provides a portion of the costs of professional liability insurance for physicians practicing medicine in health professional shortage areas and rural areas of the state.

As a safety-net health care system with five regions located on Hawaii, Kauai, Maui, Lanai and Oahu, the Hawaii Health Systems Corporation (HHSC) is keenly aware of workforce shortages and difficulties in attracting and maintaining health care professionals, particularly in rural, underserved, and health professional shortage areas. The emergency departments in the HHSC acute care public health facilities are the primary and often only providers of care to residents and visitors on the neighbor islands. Federal and state laws and regulations require physicians, including certain specialists, to be on-call at all hours to address the medical needs of patients who are admitted into these emergency rooms. In addition, emergency room physicians are frequently utilized as primary care providers for injured and acutely ill patients in the rural areas due to shortages of physicians in these communities.

HHSC supports efforts to relieve medical liability of physicians providing emergency care that would help to not only retain services of physicians who currently provide these services but to also encourage others to do so and help to improve access to quality emergency care for all. This measure, however, also requires program development and rulemaking by the department of health to which we defer technical considerations. Thank you.

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO PART OF H.B. NO. 2414**

January 31, 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 opposition to part of H.B. No. 2414.

CLH opposes the provision in Section 2, subsection (d) on page 4 of the bill. The provision states that a physician shall not be liable if the physician exercises a certain standard of care. Our objection is that the provision is applicable to situations where the physician is rendering services for compensation. The Good Samaritan statute is meant to provide certain protections where the physician renders care without remuneration.

CLH has always advocated for alternatives to provide health care in the underserved areas especially on the neighbor islands. CLH feels that some of the other alternatives such as the tax credit bill to assist in the underserved areas provide more immediate relief.

As to the other provisions in this bill CLH does not take a position as it does not have enough information to adequately comment on the viability of these provisions.

Thank you for the opportunity to testify.

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HAWAII PSYCHIATRIC MEDICAL ASSOCIATION
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COMMITTEE ON HOUSE HEALTH
Rep. Josh Green, MD, Chair
Rep. John Mizuno, Vice Chair

*For House Health Hrg
Friday, 2/1/08 at
8:00 in Rm. 329*

Re: HB 2414, Relating to Health

SUPPORT

Hawaii's rural and geographically isolated areas have difficulty recruiting and retaining health care providers, most especially medical specialists. The reasons to the problem are complex to include high cost of living, some of the lowest reimbursements in the nation and lack of tort reform. Social considerations include desire to be in urban centers and in states that offer quality public education and lower cost of housing. The solutions need to be a varied as the complexities of the problem.

Open season on physicians getting sued for medical malpractice is what the current lack of tort reform in the State of Hawaii allows. Establishing a Good Samaritan exemption from civil damages for physicians working in rural or health professional shortage areas will help allay at least this large concern of physicians. The Good Samaritan exemption would still hold physicians liable for their decision and medical actions, it just wouldn't allow for high malpractice non-economic damage awards.

Thank you for your consideration to move this measure forward.

HAWAII PSYCHIATRIC MEDICAL ASSOCIATION

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