



**STATE OF HAWAII**  
STATE COUNCIL  
ON DEVELOPMENTAL DISABILITIES  
919 ALA MOANA BOULEVARD, ROOM 113  
HONOLULU, HAWAII 96814  
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543  
February 4, 2008

The Honorable Josh Green, M.D., Chair  
House Committee on Health  
Twenty-Fourth Legislature  
State Capitol  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Representative Green and Members of the Committee:

SUBJECT: HB 3438 – RELATING TO HEALTH

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health.

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF HB 3438**. The purpose of HB 3438 is to provide an exemption from civil damages for physicians, dentists, and non-profit health care organizations that provide free services.

This bill specifies “indigent persons” as defined under Section 607-5.7, Hawaii Revised Statutes, as the target population. This would include individuals with DD under the DD Act (P.L.106-402). The provisions of the bill would be an incentive to recruit and retain licensed physicians and licensed dentists who provide free services to people with DD. We realize that physicians and dentists who provide free services do so because they want to, not because they are forced to.

We defer to the Department of the Attorney General for the legal implications of this bill. The Council appreciates the Legislature’s concern and interest in increasing the pool of physicians and dentists to serve individuals with DD.

Thank you for the opportunity to present testimony supporting the intent of HB 3438.

Sincerely,

Waynette K. Y. Cabral  
Executive Administrator

000019

**PRESENTATION OF THE  
BOARD OF MEDICAL EXAMINERS**

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Monday, February 4, 2008  
9:30 a.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 3438, 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. 3438, Relating to Health. The Board takes no position on the merits of this bill but would like to recommend a revision.

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, we recommend that osteopathic physicians be included by revising line 5 to read as follows:

"physician **or osteopathic physician** licensed pursuant to chapter 453 **or chapter 460, as the case may be**, dentist licensed..."

As you will recall, this Committee heard testimony on the Board's administration bill, H.B. No. 3105, on February 1, 2008. That bill proposes to

000020

Testimony on H.B. No. 3483  
February 4, 2008  
Page 2

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. 3438 will work.

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

000021



OFFICERS

Cynthia Jean Goto, MD  
President

Gary Okamoto, MD  
President Elect

Linda Rasmussen, MD  
Immediate Past President

Thomas Kosasa, MD  
Secretary

Jonathan Cho, MD  
Treasurer

Paula Arcena  
Executive Director

Hawaii Medical Association  
1360 S. Beretania St.  
Suite 200  
Honolulu, HI 96814  
(808) 536-7702  
(808) 528-2376 fax  
www.hmaonline.net

February 4, 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  
Dick Botti, Government Affairs Liaison

Re: HB3438 Relating to Health (Provides an exemption from civil damages for physicians, dentists, and non-profit health care organizations that provide free services)

The Hawaii Medical Association supports HB3438.

HB3438 proposes to exempt from civil liability for physicians, dentists, and non-profit health care organizations that provide free services.

This measure will help to improve access to health services for the indigent and we applaud the committee for focusing on this issue.

However, Hawaii's patient access to care crisis is much broader than the indigent. Patients with private insurance are unable to obtain the medical care they need. Broader legislation is required to adequately address the problem. We thank the committee for approving HB1992, HD1 and encourage you to continue to support meaning medical liability reform.

Unlimited and unpredictable jury awards have led to unlimited and unpredictable risk for liability insurers. In Hawaii, malpractice insurance is no longer a profitable business and Hawaii is no longer home to any for-profit malpractice insurers.

Medical Insurance Exchange of California (MIEC), The Doctors Company and Hawaii Physicians Indemnity Plan (HAPI) are the remaining malpractice insurers in Hawaii. All are not-for-profit organizations owned and operated by physicians.

Hawaii's average annual medical malpractice insurance premium increased 90% from \$33,000 to \$63,000 between 2002 and 2006 for physician specialists who provide high risk, life-saving treatment, due to the cost of defending malpractice cases filed in Hawaii. Specialists, such as Orthopedic Surgeons, Neurosurgeons, General Surgeons and Obstetricians have been hit the hardest.

According to the Medical Insurance Exchange of California, Hawaii's major medical malpractice insurer, 86% of claims filed against its insured Hawaii physicians are found to be without merit and result in no payment to the claimant.

PLEASE DELIVER  
Health Committee  
Monday  
2-4-08  
9:30am  
Room 329

000022

The State of Hawaii Medical Claims Conciliation Panel reviews all medical malpractice claims filed in Hawaii. In 2006, the MCCP found no negligence in 82% of the cases it reviewed.

As a result, Hawaii has a shortage of physicians in both primary care and specialty care. Patients do not have access to the medical care they need.

The Hawaii legislature needs to pass laws that stabilize now volatile medical malpractice insurance premiums, which is a major cause of Hawaii's patient access to care crisis.

The HMA recommends the following as meaningful ways to stabilize medical malpractice insurance premiums, proven successful by other states:

1. Establish a \$250,000 cap on non-economic damages

- 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.

2. Abolish Joint and Several Liability

- Hold defendants responsible only for the portion of fault attributable to them.

Formerly in crisis, the state of Texas has successfully overcome its patient access to care crisis in large part due to establishing caps on non-economic damages and correcting the inequity of its law on joint and several liability. Improvements include:

- 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).

Hawaii could reap similar benefits with the passage of meaningful medical liability reform.

Thank you for the opportunity to testify on this matter.

000023

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER  
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 3438**

February 4, 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. 3438.

Two of the major goals of tort law are compensation for the victim and deterrence of negligent behavior. This bill provides for absolute immunity for physicians, dentists and non-profit health organizations where a person is injured or dies because of the negligence of a health provider on the basis that the services provided are free. Under this bill a physician could be grossly negligent and he or she would be immune from liability and completely unaccountable for any injury to a person because the service was provided for free.

This bill is not good public [policy, is anti-consumer in nature, and discriminates against persons who are indigent. An indigent person would have no rights or recourse if injured through the negligence of a physician or dentist. The tort system works in our daily lives to insure that our families live in a safer environment. This bill is totally opposite to this philosophy.

Because of the reasons stated above, CLH strongly opposes this bill and requests that it not pass out of this committee. Thank you for the opportunity to testify.

000024

**mizuno1-Edgar**

---

**From:** Jerry Allison [jallisonmd@yahoo.com]  
**Sent:** Saturday, February 02, 2008 10:37 PM  
**To:** HLTtestimony  
**Subject:** HB 3438 Comm on Health Hearing 2/4 9:30am

Dear Committee Members,

I am the medical director of the Aloha Medical Mission Honolulu Free Clinic.

I support this bill, and any bill that would provide immunity for clinics such as ours. As you may know, we provide free, interim medical and oral health services to homeless, indigent, immigrant, and uninsured residents of Hawaii. We rely on volunteer physicians, dentists, nurses, medical and dental assistants, and others to take time away from their families and work, and give freely to help the patients that come to our clinic. We do not bill and accept no fee for service. As such, paying for malpractice insurance is a financial burden that requires us to solicit funds from other agencies or organizations to help us pay the premiums.

I support this bill, particularly if it includes services such as ours and the physicians and dentists that work with us.

If this bill does not include services like the Aloha Medical Mission I encourage you to be sure it is included.

Thank you for your time and feel free to contact me if you have any questions.

Jerry Allison, MD, MS  
Medical Director  
Aloha Medical Mission Honolulu Free Clinic

000025

**Testimony of Daniel Paul de Gracia, II, MA**  
Concerned Citizen

In Support Of:

H.B. NO. 3438, RELATING TO HEALTH.  
House Committee On Health  
Monday, February 4, 2008, 9:30 AM  
Hawaii State Capitol, Room 329

**Chair Green and Members of the Committee:**

The purpose of this measure is to provide exemption from civil damages for physicians, dentists, and non-profit health care organizations that provide free services.

I strongly support H.B. 3438 and urge the members of the committee to pass this bill. Thank you for this opportunity to testify.

000026