

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  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Friday, April 4, 2008  
2:55 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 349 – REQUESTING  
THE LEGISLATIVE REFERENCE BUREAU TO STUDY THE EFFECTS OF MEDICAL  
TORT REFORM ON ACCESS TO HEALTH CARE.**

TO THE HONORABLE MICHAEL Y. MAGAOAY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

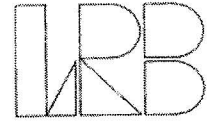
My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”).

The Department is willing to cooperate with the Legislative Reference Bureau  
study on the effects of medical tort reform on access to health care.

We thank the Committee for this opportunity to testify on this resolution.

Ken H. Takayama  
Acting Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

**COMMENTS ON HCR 349**

**REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO  
STUDY THE EFFECTS OF MEDICAL TORT REFORM ON  
ACCESS TO HEALTH CARE**

Comments by the Legislative Reference Bureau  
Ken H. Takayama, Acting Director

Presented to the House Committee on Legislative Management

Friday, April 4, 2008, 2:55 p.m.  
Conference Room 423

Chair Magaoay and Members of the Committee:

Thank you for this opportunity to comment on H.C.R. No. 349. The Bureau takes no position for or against this measure but offers the following comments.

The resolution directs the Bureau to study the effects of medical tort reform on access to health care.

We believe that this study may be both difficult and contentious. As presently drafted, however, the scope of the study requested in this measure appears to be manageable.

We will endeavor to work with the Legislature to produce a study that is informative and useful.

Thank you very much for this opportunity to submit our comments.



April 4, 2008

The Honorable Michael Magaoay, Chair  
The Honorable James Kunane Tokioka, Vice Chair  
House Committee on Legislative Management

**Re: HCR 349 – Requesting the Legislative Reference Bureau to study the effects of medical tort reform on access to health care.**

Dear Chair Magaoay, Vice Chair Tokioka 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  
Medical Assurance Association (HMAA)  
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 HCR 349 which requests the Legislative Reference Bureau to study medical malpractice tort reform’s effects on other jurisdictions across the nation. HAHP supports this as a good first step towards helping to make sense of the tort reform debate and to discover if this initiative truly makes a difference in physician retention rates and the ability of states to attract certain specialties.

Thank you for the opportunity to testify today.

Sincerely,

Rick Jackson  
President

Dr. Myron Berney, ND LAc  
908 16<sup>th</sup> Ave  
Honolulu, HI 96816

808-735-5133

SCR 349 need redesign

The purpose of this study is to look into the relationship of medical malpractice rates and the availability or number of physicians practicing in various geographic areas and in various professional areas or specialties.

The public is aware, as is the Legislature, that insurance rates are raising and have risen substantially.

The public and the Legislature is also fully aware that at the same time the medical fee schedule

- ✓ hasn't kept pace is inflation,
- ✓ hasn't kept pace with insurance industry CEO salaries, and
- ✓ that doctors and hospitals are in serious financial hardship due to lack of income and rising expenses.

The public intent of the agenda is to improve health care delivery availability and accessibility.

Bringing more doctors to Hawaii and keeping persons on the job is a multifactorial problem.

This proposed study looks at only one aspect or factor concerning these complex issues.

To ignore the other perhaps more important or more influential issues is to ignore solving the real problem at hand, why are doctors retiring ASAP and why aren't new doctors coming to the State and to rural areas.

The study design is biased to meet Dr.Green's, George Bush's, Linda Lingle's and the Insurance Industry's personal agenda not to bring more doctors to Hawaii or keep doctors on the job.

Actually the only agenda for the Insurance Companies is to increase stockholder profits. The current system due to Insurance regulations constantly drains money out of the health care system and ships it out to stockholders and foreign investors. When the economy goes up stockholders take profits and when the stock market and the economy take a down turn, the Insurance Industry takes money from doctors to make up the asset loss. Malpractice rates are influence more by the stock market than by payouts. Limiting payouts will increase Insurance profits but may not improve or stabilize rates.

**The study design deliberately doesn't look at the most important factors that determine malpractice rates.**

The LRB has asked that the study design not be amended to include the multitude of issues the Legislature needs to contemplate in order to resolve this complex and heated issue.

The study design will fail to meet the public need and additional studies will be needed in years to come only postponing real reform.

Is Hawaii out of line in its tort process or claim payouts?

What actually will bring new doctors to Hawaii?

Are there other marketing strategies that would be more successful such as helping new grads pay off their student loans?

Physicians practicing fee for service have no employee protection as an independent contractor whereas physicians receiving a salary have employee protection, no employee benefits, no job security. How can we resolve this wrong done to physicians?

Is capping fees the only or best solution if a solution at all? We haven't even looked at what the payouts have been. Have there been excessive payouts? Do payouts reflect just recovery or are they somewhat arbitrary and capricious?

Perhaps a system designed somewhat like Workers' Compensation claims resolution process would be better than continuing with a full on adversarial judicial resolution. Workers gave up their right to sue in exchange for what is designed to be a better alternative to tort. If patients give up their right to sue, what consumer protection is to take its place?

Why do most doctors want to go into cosmetic surgery and dermatology? Cosmetic surgery isn't covered by insurance and has a high malpractice rate? Could it be that cash 'on the barrel head' without having to deal with an insurance adjustor or the government limiting fees may be more important than malpractice rates?

Why do most doctors want a job with a salary instead of being an independent contractor without any benefits or protections?

In this multifactorial problem we need real solutions not just self serving studies that save only one class of physicians money. Some doctors can actually afford malpractice insurance.

Are there other alternatives to malpractice insurance? Yes, there are asset protection plans that prevent malpractice suits.

What should the State do to assure that hospitals and physicians can stay in business? This will require a lot more than merely looking at one factor in a multifactorial problem.

This biased study design will give the intended results for this special interest group but not the information that an informed Legislature needs to proceed rationally.

The LRB needs to be directed under a study without design flaws.  
The LRB needs to look at the variety of factors affecting declining physician numbers.

This study should include creative solutions generated by DBET and others to assist the Legislature in actually keeping doctors on the job and in reforming medical malpractice without loosing consumer protections.

This study is designed to give biased information insufficient to make fully informed decisions merely directed to lowering medical malpractice rates for a few physicians in high rate specialties, like the ER. Doctors that pay lower rates may not see any if all adjustments to their rates.

On the other hand, reasonable fees keeping pace with inflation will keep all doctors in the "black" on their balance sheet and hospitals won't depend upon state and federal cash infusions to avoid bankruptcy.

Paying off student loans 10% per year per 10 years will attract new doctors and establish them in Hawaii.

If Hawaii rates are same or similar to other states then there won't be much draw for new doctors.

Why not design a good study?

Thank you for you attention and assistance in these matters.

Respectfully,

Dr. Myron Berney, ND LAc