

SB2789

Measure Title:
RELATING TO LIABILITY.

Report Title:
Torts; Liability; Health Care Providers; Pandemics

Description:
Exempts from liability emergency care rendered by a health care provider or health care facility in response to specified emergencies.

Introducer(s):
CHUN OAKLAND, BAKER

Current Referral:
HTH, JDL

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 2789**

February 13, 2008

To: Chairman David Ige and Members of the Senate 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 S.B. No. 2789.

The purpose of this measure is to give absolute immunity to health care providers and facilities who assist governmental agencies during natural disasters, bioterrorism, acts of terrorism, a pandemic, or any other event of similar nature for liability arising out of negligent conduct. CLH opposes this measure: (a) because it is largely unnecessary for volunteer emergency medical personnel during disaster conditions, and current law already takes into account the circumstances in which the physician performs in measuring the care required at the time.

Volunteer emergency medical providers are currently given immunity under Section 321-228.5 for assistance given to governmental agencies during disaster conditions and mass casualty events. "Disaster conditions" is defined as a catastrophic event that causes loss of property or life and exceeds or disrupts the capabilities of available medical resources to provide medical care within a community. "Mass casualty event" is defined to include situations where casualties exceed the ability to provide usual medical care including terrorist bombings. The current section is already broad enough to cover natural disasters, bioterrorism, acts of terrorism, pandemics or other events of similar nature that are of a disastrous nature. The current bill does not define or limit the immunity to situations that are truly disastrous in their consequences and

beyond the ability to provide usual medical care. Thus, the bill can be interpreted to apply to situations that are not severe enough to justify the immunity granted.

For those situations which may fall short of the emergency for disastrous circumstances required for immunity under Section 321-228.5, current law already provides that the circumstances of the situation must be considered in evaluating whether health care providers exercised appropriate care in the treatment of patients. The Hawaii Supreme Court adopted a standard jury instruction in 2002 that requires the consideration of the circumstances in which treatment is rendered:

It is the duty of a [physician/nurse/specialty] to have the knowledge and skill ordinarily possessed, and to exercise the care and skill ordinarily used, by a [physician/nurse/specialty] practicing in the same field **under similar circumstances**.

Thus, under current law, immunity is given for truly disastrous or emergency conditions while the circumstances of less serious conditions must be taken into consideration so that health care providers can be given greater leeway in more serious conditions while they may be expected to perform at a higher level under less serious conditions. The current law fairly varies the care required depending upon the circumstances.

CLH appreciates this opportunity to testify in opposition to S.B. No. 2789.