

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS
OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 1514**

February 10, 2009

To: Chairman Ryan Yamane and Members of the House Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in strong opposition to H.B. No. 1514.

This bill provides for a ceiling on noneconomic damages that may be awarded against those physicians that are board certified in neurology or neurosurgery. HAJ has always opposed “caps” on noneconomic damages and we oppose this bill as well.

Noneconomic damages compensate an injured victim for important losses that can never be replaced. These are losses that are intangible but nonetheless real. For example, noneconomic losses would include the trauma caused by the loss of a sense such as eyesight, injuries to the reproductive system, loss of a limb or a body part, scarring, and the death of a loved one.

Capping damages for noneconomic losses unfairly impact women who traditionally do not experience high economic (or wage) losses, but rather experience losses when their health and well-being is affected. The harm to their health and well-being should not be undervalued by an arbitrary limit.

Capping damages for noneconomic losses is also particularly unfair to children and the elderly. In wrongful death claims, for instance, their value of life is often underestimated because they do not generally have income that can be used to measure their economic worth.

Further, we feel strongly that the argument in favor of caps—that it will either significantly lower insurance premiums and/or be an incentive for neurosurgeons or other specialists to move to rural areas—is without foundation. The studies have clearly shown that the factors involved in a physician's decision to locate his/her practice is based on a lifestyle preference, economic opportunities, cost of living, quality of education for children, and the desire of his or her spouse to move to that location, be it an urban or rural setting.

These are only some of the reasons why HAJ is opposed to limitations on noneconomic damages. We have always argued that it is anti-consumer and not good public policy.

Thank you for the opportunity to testify on this issue and on the bill.



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To: House Committee on Health
Rep. Ryan I. Yamane, Chair
Rep. Scott Y. Nishimoto, Vice Chair

Health Committee

2/10/2009
8:30 a.m.
Room 329

From: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

Re: HB 1514 RELATING TO MEDICAL TORTS

Chairs & Committee Members:

In support of HB 1514.

While this measure does is not as broad in scope as is HB 1784, it does address the subject matter, and would be a good vehicle to allow continued discussion on the issue it is intended to address.

Thank you for the opportunity to provide this testimony.

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February 10, 2009

The Honorable Ryan Yamane, Chair
The Honorable Scott Nishimoto, Vice Chair
House Committee on Health

Re: HB 1514 – Relating to Medical Torts

Dear Chair Yamane, Vice Chair Nishimoto 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	MDX Hawai‘i
Hawaii Medical Assurance Association	University Health Alliance
HMSA	UnitedHealthcare
Hawaii-Western Management Group, Inc.	

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 1514 which would lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates. HAHP supports the intent of this bill as a good first step toward helping to contain 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 such as neurology. 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.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

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Memo

To: Chair, House Health Committee
From: Marty Fritz
Date: February 10, 2009, Tuesday at 8:30 a.m.
Re: **HB 1514**

Honorable Chair and Committee Members. My name is Marty Fritz. I am a lawyer who represents a small number of medical malpractice victims who suffer horrific injuries or death from doctors errs.

The bills your committee is hearing relating to tort reform have one basic assumption--- there is a need for some change. The arguments I have heard supporting these bills are primarily that there is an explosion in medical malpractice verdicts in the State of Hawaii which is leading large numbers of physicians to leave the state. There are no specifics presented, rather emotional non specific allegations of the negative effects of the current system. The reason why these arguments are non specific is because they are unable to be supported by relating on evidence and analysis.

As a former member of the bipartisan committee appointed by the legislature in the late 1990's to make a two year study of the tort system, I am quite aware of how faulty perceptions combined with emotions and publicity can powerfully impact the legislative process. In the 1990's there was a perception that the costs of the tort system were out of control. The study, which thoroughly reviewed actual cases and filings, found to nearly everyone's surprise that just the opposite was true i.e. *there had been a significant drop in accidents and court filings.*

Of Counsel:
Steven J. Trecker