

STAND. COM. REP. NO. 723

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1784  
H.D. 2

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1784, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL TORTS,"

begs leave to report as follows:

The purpose of this bill is to protect both patients and physicians while addressing the high costs of medical malpractice insurance and defensive medicine by, among other things:

- (1) Limiting the amount awarded for noneconomic damages in medical tort cases against physician specialists;
- (2) Setting the award limit for noneconomic damages in cases of gross negligence by physician specialists;
- (3) Requiring health care providers to disclose to patients adverse events relating to their medical treatment; and
- (4) Requiring the Hawaii Medical Board to collect and publish information about physicians licensed in the state to allow consumers to make informed decisions in selecting physicians.

The Department of Health, Castle Medical Center, National Federation of Independent Business, Hawaii Medical Association, and several concerned individuals testified in support of this

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bill. The Insurance Division of the Department of Commerce and Consumer Affairs, Office of Language Access of the Department of Labor and Industrial Relations, and Hawaii Association of Health Plans supported the intent of this measure. The Hawaii Association for Justice and several concerned individuals opposed this bill. The Hawaii Medical Board, Queen's Medical Center, and a concerned individual offered comments.

Your Committee has amended this bill by, among other things:

- (1) Deleting the new section concerning admission of evidence of collateral benefits;
- (2) Deleting the new section regarding attorney fees;
- (3) Deleting the new section regarding periodic payments;
- (4) Changing the maximum award limit for noneconomic damages from \$250,000 to the amount proposed by the Medical Malpractice Task Force and enacted; except the limit shall not apply if the claimant's economic damages are less than \$1,500,000;
- (5) Deleting the \$3,000,000 cap on noneconomic damages resulting from gross negligence;
- (6) Requiring the trier of fact to consider the negligence or other fault of all alleged parties, in the assessment of percentage of negligence or other fault;
- (7) Clarifying that if there is a verdict for the plaintiff in a medical tort action, the court shall make each defendant physician specialist liable for the percentage of negligence or other fault for noneconomic, rather than compensatory, damages attributed to the physician specialist, which is to be capped at the maximum award limit for noneconomic damages;
- (8) Giving a claimant three years to commence legal action after discovering a cause of action concealed by fraud, intentional concealment, or the presence of a foreign body that has no therapeutic or diagnostic purpose or effect;
- (9) Deleting the definitions of "gross negligence" and "periodic payments";



- (10) Specifying that the provisions of the bill apply to physicians or osteopathic physicians licensed in the state and board-certified in general surgery;
- (11) Requiring the Insurance Commissioner to set the premium rate for health care provider professional liability insurance, based on the average of the premium rates between January 1, 2003, and December 31, 2009, instead of at 25 percent of the lowest rate in effect during that period;
- (12) Establishing the Medical Malpractice Task Force, to be dissolved on June 30, 2011, that shall:
  - (A) Develop a strategic plan to address the high costs of medical malpractice insurance rates;
  - (B) Propose a maximum award limit on noneconomic damages to take effect on July 1, 2010, if enacted;
  - (C) Study various issues relating to medical tort reform; and
  - (D) Develop recommendations on damage award ranges and guidelines for malpractice claims based on recent cases, which may be used in cases to determine damages;
- (13) Establishing the Medical Malpractice Rate Commission that shall convene in 2010, and every three years thereafter, to evaluate certain factors and conduct public hearings to establish:
  - (A) A fair and reasonable market-price medical malpractice insurance rate for physician specialists in Hawaii, including a medical malpractice insurance rate range specifying the minimum and maximum rate price; and
  - (B) A maximum award limit for noneconomic damages for physician specialists;



- (14) Requiring the Department of Commerce and Consumer Affairs, in its report to the Legislature, to include annual statistics relating to the effects of the implementation of the medical tort reform provisions contained in the bill;
- (15) More appropriately placing the provision regarding notification of patients of adverse events in Chapter 671, Hawaii Revised Statutes (HRS), rather than Chapter 321, HRS;
- (16) Specifying that whenever possible, a health care provider or an appropriately trained designee of a health care provider must notify in person each patient regarding any adverse event that could result in serious harm to or a life threatening situation for the patient within 72 hours of the adverse event or discovery of the adverse event; provided that all applicable federal laws regarding patient care shall still apply;
- (17) Changing the definition of "adverse event";
- (18) Changing the definition of "notify";
- (19) Amending the penalty for failure to comply with the requirement for notification, from license revocation and any other civil or criminal penalties permitted by law, to disciplinary action as established by the Hawaii Medical Board, and any other applicable civil penalties as permitted by law;
- (20) Deleting the provisions that would have made available to the public a profile of each physician licensed to practice medicine in the state;
- (21) Changing its effective date to July 1, 2046, to encourage further discussion; and providing that the noneconomic damages provisions are to take effect on July 1, 2047, and be repealed on June 30, 2014; and
- (22) Making technical, nonsubstantive amendments for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1784, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1784, H.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



JON RIKI KARAMATSU, Chair



